057923/EU XXVI. GP
Eingelangt am 14/03/19

Council of the
European Union

Brussels, 14 March 2019
(OR. en)

7465/19

FISC 174

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Grenada's Offshore Banking regime (GD002) – Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

The Code of Conduct Group assessed the regime as harmful in 2017 on the basis that it was ring-fenced and lacked substance requirements. Grenada has repealed the regime by the Offshore Banking (Repeal) Act 2018: see ADD 1. The act entered into force on 31 December 2018. Grandfathering is provided until 31 December 2021.

The Code of Conduct Group meeting of 30 January 2019 approved the rollback of the regime. This conclusion was endorsed by the ECOFIN Council on 12 March 2019.

Annex 1: Assessment of the old GD002 regime in 2017 (standstill review)

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Assessment of the old GD002 regime in 2017 (standstill)

a. Description of the regime

The 2008 Offshore Banking Act provides for specific rules on offshore banking according to which a company desirous of commencing an offshore banking business or trust business from within Grenada shall apply to the Minister for a license.

The license will be granted to the applicant if, amongst other conditions:

- it is incorporated in accordance with the International Companies Act, is a qualified foreign bank, or other financial institution as defined in section 2;
- its objects or business activities are restricted to offshore banking or trust business whether within or outside of Grenada;
- it provides the Authority with the names and addresses and other particulars of identification with respect to every shareholder of the company;
- notwithstanding anything contained in the International Companies Act, has at least two directors, all of whom must be natural persons and one of whom must be a citizen of and resident in, Grenada.

The Offshore banking Act sets as a condition for a licence that:

- the licensee may not accept any deposit for the account of a resident of Grenada or keep a resident of Grenada as a customer for any of its offshore banking services;
- if the licensee is a foreign bank or other financial institution, it shall separate activities in Grenada and keep separate records of its offshore banking activities.

A licensee shall not conduct offshore banking business or trust business with any person resident in Grenada other than another licensee, or an international company and invest in any asset that represents a claim on any person resident in Grenada.

b. Benefits available to Offshore Banks

The normal corporate tax rate in Grenada is 30%.

The Offshore Banking Act grants an exemption of income tax, capital gains tax and any other direct tax upon the profits or gains of a licensed offshore bank.

No income tax, capital gains tax or other direct tax or impost shall be levied in Grenada in respect of any dividends or earnings attributable to the shares or securities of a licensee that are beneficially owned by another licensee or by a person who is not a resident of Grenada.

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c. Possible concerns

Our understanding of Grenada legislation is that the regime seems targeted at activities with foreign entities/markets that are not domiciled or resident in Grenada. Offshore banks are prohibited from carrying on banking business with persons domiciled or residents in Grenada. A regime limited to foreign tax payers and/or to operations outside the territory of the jurisdiction does not meet criteria 1 and 2 of the Code of Conduct.

d. Assessment

	1a	**1b**	**2a**	**2b**	**3**	**4**	**5**
Offshore banking regime - GD002	V	V	V	V	V	X	X

V = harmful

X = not harmful

Explanation

Gateway criterion : Significantly lower level of taxation

"Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code"

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The measure therefore provides for a significantly lower level of taxation and is potentially harmful under the Code.

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Criterion 1 a) and b)

"whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents"

Criterion 1 contains two elements. The first element, concerns de jure element, aims at measuring whether the regime is exclusively available to non-residents or transactions with non-residents (criterion 1a). The second element, de facto element, measures whether the regime is only or mainly used by non-residents or for transactions with non-residents (criterion 1b).

Criterion 2 a) and b)

"whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base"

As regards criterion 2 the division between criteria 2a and 2b is done in the same way as in the case of criterion 1 (i.e. de jure interpretation and de facto analysis). In general, a measure is caught by criterion 2 if the advantages are ring-fenced from the domestic market so that they do not affect the national tax base. In most cases, the evaluation against criterion 2 follows closely that of criterion 1.

There is evidence that suggests are ring-fenced from the domestic market.

Criterion 3

"whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages"

The measure does not include any express requirement for real economic activity or substantial economic presence.

Criterion 4

"whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD"

There is no evidence to suggest that the rules for profit determination in respect of activities within multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD.

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Criterion 5

"whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way"

There is no evidence to suggest that the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.

Overall assessment:

In light of the assessment made against the Code of Conduct criteria, the regime qualifies as harmful under criteria 1, 2 and 3 of the Code of Conduct.

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