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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Grenada's International Companies regime (GD001) – 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 Grenada has repealed the regime by the International Companies (Repeal) Act 2018: see ADD 1.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 GD001 regime in 2017 (standstill review)

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ANNEX 1

Assessment of the old GD001 regime in 2017 (standstill)

a. Description

Under the 2008 International Companies Act, a Grenada registered International Company automatically receives a 20-year exemption from all taxes.

International Companies shall not:

- carry on business with persons domiciled or resident in Grenada;
- own an interest in real property in Grenada other than a lease;
- engage in offshore banking business, provide trust services or engage in investment brokerage unless licensed to do so by written law; or
- engage in offshore insurance business, merchant shipping or carry on any other type of international business unless licensed to do so by written law.

b. Benefits available to International Companies

International business companies are exempt from all taxes.

The normal corporate tax rate in Grenada is 30%.

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. International Companies are prohibited from carrying on 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.

Grenada views the description as accurate.

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d. Assessment

	1a	1b	2a	2b	3	4	5
International companies regime - GD001	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"

The standard corporate income tax rate is 30 % in Grenada. International business companies are exempt from all taxes. The measure therefore provides for a significantly lower level of taxation and is potentially harmful under the Code.

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).

This regime is only open to non-residents or in respect of transactions carried out with non-residents.

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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 that the regime is ring-fenced from the domestic market, so they do not affect the national tax base (this evidence is below).

International companies are limited liability companies incorporated under the International Companies Act.

ICs are not permitted to do the following:

- carry on business with persons domiciled or resident in Grenada;

- own an interest in real property in Grenada other than a lease;

- engage in offshore banking business, provide trust services or engage in investment brokerage unless licensed to do so by written law; or

- engage in offshore insurance business, merchant shipping or carry on any other type of international business unless licensed to do so by written law.

<u>*ICs are exempt from income tax, withholding tax, corporation tax, business levies and aliens land tax for a period of 20 years starting from the date of incorporation.*</u>

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.

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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.

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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