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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Grenada's International Trusts regime (GD004) – 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 amended the regime by the International trust (Amendment) Act 2018: see ADD 1. The act entered into force on 31 December 2018. No grandfathering is provided.

From 1 January 2019, one single regime is applied to domestic as well as non-domestic trusts. This eliminates the de jure ring-fencing. It can be expected that trusts formerly covered by the International Trusts Act will henceforth be covered by the general Trust Act. However, it is not possible to assess whether there is de facto ring-fencing, as statistics are not yet available for the new situation.

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 GD004 regime in 2017 (standstill review)

ANNEX 1

Assessment of the old GD004 regime in 2017 (standstill)

a. Description of the regime

Under the 2008 International Trust Act, an international trust is a trust in respect of which:

- the settlor is resident outside Grenada;
- at least one of the trustees is a trust corporation;
- no beneficiary, other than a person set out in paragraph (a), is a resident of Grenada; and
- the trust property does not include any immovable property situate in Grenada or an interest in any property so situate.

The beneficiary of the trust may be:

- an international insurance company within the meaning of the International Insurance Act;
- an offshore bank within the meaning of the Offshore Banking Act;
- an international business company within the meaning of the International Companies Act.

The trust property of a Grenada offshore trust must not be located in Grenada.

b. Benefits available under the Offshore Trust regime

The income from an international trust that is received by a beneficiary who is not resident in Grenada is exempt from income tax. An international trust is exempt from any tax or duty in Grenada on the funds of the trust that comprise foreign currency or foreign securities.

c. Possible concerns

Our understanding of Grenada legislation is that the tax exemption is conditional upon the beneficiary being non-resident of Grenada. The trust property of a Grenada offshore trust must not be located 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.

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d. Assessment

	1a	1b	2a	2b	3	4	5
Grenada's International Trusts regime - GD004	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 income from an international trust that is received by a beneficiary who is not resident in Grenada is exempt from income tax. An international trust is exempt from any tax or duty in Grenada on the funds of the trust that comprise foreign currency or foreign securities.

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 this regime is 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.

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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