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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Grenada's International Insurance regime (GD003)
– 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 Grenada has repealed the regime by the International Insurance (Repeal) Act 2018: see ADD 1.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 GD003 regime in 2017 (standstill review)

Assessment of the old GD003 regime in 2017 (standstill)

a. Description of the regime

A licence granted by the Minister is necessary to carry on offshore insurance business. Such licence can be granted either to an International Company or a foreign company.

The 2008 Offshore Insurance Act provides for specific rules on offshore insurance business which is defined as the carrying on or the conducting whether within or outside Grenada of any insurance business where each of the insured:

- is not domiciled in Grenada;
- is not ordinarily resident in Grenada;
- is not a company incorporated or registered in Grenada under any legislation other than the International Companies Act; or
- is a trustee company.

One of the conditions to be granted a licence is that the licensee will not carry any activities from within Grenada, otherwise than in connection with or for the purpose of the particular offshore insurance business in respect of which it is registered.

Under section 34 of the Offshore Insurance Act, the Minister may exempt a registered insurer from all or any part of the provisions or any regulations made under the Offshore Insurance Act and may impose such terms and conditions as he or she thinks fit as a condition under which such exemption is granted. An exemption granted under this subsection may be revoked or other terms and conditions changed by the Minister at any time. In dealing with an application the Minister shall not be required to act judicially and his or her decision in all cases shall be final.

b. Benefits available under the Offshore Insurance regime

The normal corporate tax rate in Grenada is 30%.

No income tax, nor any other direct or indirect tax, shall be levied in Grenada in respect of any offshore insurance business.

No income tax, nor any other direct or indirect tax, shall be levied in Grenada in respect of any dividends or earnings, or upon any premiums paid to a registered insurer or money paid to an insured by a registered insurer or money paid to an insured by a registered insurer attributable to the shares or securities of a registered insurer that are beneficially owned by another registered insurer or by a person who is not a resident of Grenada.

c. Possible concerns

Our understanding of Grenada legislation is that international insurers are prohibited from carrying on insurance 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.

An important Code of Conduct criterion used to assess the harmfulness of a regime is its transparency (criterion 5). A measure is considered not transparent when it is subject to approval, and the exact requirements are not laid down in law. The section 34 exemption seems to grant discretionary power to the Minister.

d. Assessment

	1a	1b	2a	2b	3	4	5
International insurance regime - GD003	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.

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.

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.

Criterion 5

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

A measure is considered not transparent when it is subject to approval, and the exact requirements are not laid down in law. The section 34 exemption Minister seems to grant discretionary power to the Minister.

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.
