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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Grenada's Fiscal Incentives regime (GD005) – Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

The Code of Conduct Group assessed the regime (Fiscal incentives under various Acts) as harmful in 2017 on the basis that it was ring-fenced and did not comply with the transparency requirements of the Code.

Grenada has shared its Investment Act 2014 (see ADD 1), which had already replaced the fiscal incentives under various acts and pointed to the relevant provisions that address the issues identified by the Code of Conduct Group.

The acts that have been repealed by the Investment Act are as follows:

(a) The Fiscal Incentives Act, Chapter 107;

(b) The Grenada Investment Promotion Act, Chapter 131B;

(c) The Hotels Aid Act, Chapter 138;

(d) The Investment Code Incentives Act, Chapter 155; and

(e) The Qualified Enterprises Act, Chapter 270.

The Investment Act applies in the same way irrespective of the nationality of the entity or transaction benefitting from the regime (Section 3). The application of the regime appears to be sufficiently transparent (Sections 4 and 5 of the Act and Section 36A of the ITA) and there appears to be no room for arbitrary decisions.

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 GD005 regime in 2017 (standstill review)

ANNEX 1

Assessment of the old GD005 regime in 2017 (standstill)

a. Description of the regime

Under the Fiscal Incentives Act, the Qualified Enterprises Act and the Hotel Aids Act, certain foreign companies may be granted a tax emption or holiday. The incentives may be granted provided that an enterprise is beneficial to the economy of Grenada. Under the Fiscal Exemption Act incentives can be granted for up to 15 years.

b. Benefits available under the Fiscal incentives

Companies may be granted complete or partial exemption from tax for up to 15 years, depending on the classification of the company. The normal tax rate is 30%.

Where the export profits of enterprises referred to in the Act, amount to ten (10) % or more of the entire profits of the enterprise, from the export of an approved product, relief shall be granted from income tax on the export profits. This relief is granted by way of tax credits.

Amount of export profits expressed as a percentage of the entire profits	Maximum percentage of tax relief
10% or more but less than 21%	25%
21% or more but less than 41%	35%
41% or more but less than 61%	45%
61% or more	50%

Where shareholders or their nominees are not resident in Grenada, they shall be exempted from income tax on dividends, in respect of the amount of tax that exceeds the tax liability of the shareholder in his country of residence.

c. Possible concerns

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. The incentives seem targeted at activities with foreign entities/markets that are not domiciled or resident in Grenada.

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.

d. Assessment

	1a	1b	2a	2b	3	4	5
Grenada's Fiscal Incentives regime (GD005)	V	V	V	V	X	X	V

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”

Companies may be granted complete or partial exemption from tax for up to 15 years, depending on the classification of the company. Where shareholders or their nominees are not resident in Grenada, they shall be exempted from income tax on dividends, in respect of the amount of tax that exceeds the tax liability of the shareholder in his country of residence.

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"

There is no evidence to suggest advantages are granted even without any real economic activity and substantial economic presence within the member state offering such tax advantages.

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. Law seems to grant the Minister discretionary powers in the award of the incentive (though this is not clear).

Overall assessment:

In light of the assessment made against the Code of Conduct criteria, the regime qualifies as harmful under criteria 1, 2 and 5 of the Code of Conduct.