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## OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council  
To: Code of Conduct Group (Business Taxation)  
Subject: Grenada's Export Processing regime (GD006)  
– Final description and assessment

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### ROLLBACK REVIEW PROCESS (JANUARY 2019)

The regime applies to profits from various activities, both highly mobile and non-highly mobile.

The Code of Conduct Group assessed the regime as harmful in 2017, on the basis that it was ring-fenced and did not comply with the transparency requirements of the Code. The Group also agreed that it had not been possible to establish whether the measure includes any express requirement for real economic activity or substantial economic presence, and therefore proposed a question mark for criterion 3.

Grenada has informed the Group that only one specified company has “*the sole right to manage and control any free zone*” (Free Trade and Processing Zone Act, 2015, Section 4). The Act was designed to facilitate the agreement between the Government of Grenada and the company, rather than providing for broad regulation of the new industry. Rights created under the Act are valid for a period of 60 years. Grenada has stated that the Act can be amended to include other companies or a licensing regime. However, they first need to solve the issue of the agreement with the company benefitting from the Act.

The regime is designed to apply to one company only and is not open to further companies. Paragraph A of the Code of Conduct covers laws, regulations and administrative practices. This is to be interpreted widely and the regime in question should be covered by that definition. However, since only one company (Urbaniza Incorporações e Participações Ltda) is benefitting from the regime and the legislation does not allow other beneficiaries, the regime would not seem to have any harmful effects under the Code of Conduct.

The Code of Conduct Group meeting of 30 January 2019 therefore considered the regime as not harmful. This conclusion was endorsed by the ECOFIN Council on 12 March 2019.

*Annex 1: Assessment of the old GD006 regime in 2017 (standstill review)*

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**Assessment of the old GD006 regime in 2017 (standstill)**

**a. Description of the regime**

The Free Trade and Processing Zone Act (FTPZ Act) gives the Minister of Finance the authority to designate an area as a free zone upon the application by the requisite company.

Activities that can take place within the FTPZ are for example:

- commercial, financial, business and services centre activities, and services incidental thereto, pursuant to the Offshore Banking Act, the International Insurance Act and the International Companies Act;
- functional container port activities, as well as activities at auxiliary facilities and locations to be determined by the concessionaire;
- sea and air transportation services;
- imports of goods and construction materials, machinery and equipment, including fixtures, furniture and technical equipment, incorporated into any and all buildings within a free zone or a processing zone;
- exports, including export processing activities;
- warehousing and storing;
- trans-shipment;
- loading and unloading operations;
- packaging and shipping; assembling;
- merchandising, including international trading of products;
- sale of goods and services produced;
- processing, refining, purifying, mixing and recycling of all materials.

**b. Benefits available under the FTPZ Act**

The normal corporate income tax rate in Grenada is 30% on the annual net profit of a company in excess of ECD 60,000. Companies approved under FTPZ Act are exempt from tax for a period of 60 years with the possibility for an extension of another 60 years.

### c. Possible concerns

The tax incentive granted to offshore mobile activities seems targeted to foreign enterprises or for activities with foreign entities/markets since tax advantages are granted only to foreign enterprises or in respect of transactions carried out with non-residents, the purpose of the FTPZ Act being to promote investment and export development.

A regime limited to foreign tax payers and/or to operations outside the territory of the jurisdiction does not meet criteria 1 & 2 of the Code of Conduct which prohibit this type of ring-fencing.

Another important criterion to assess the harmfulness of a tax regime is the substance criterion (criteria 3 of the Code of Conduct). The description of the regime seems to indicate there is no actual requirement regarding the substance for the benefits to be granted.

Another important Code criterion used to assess the harmfulness of a regime is its transparency (criterion 5). A measure is considered as not transparent when it is not laid down in law but granted on a discretionary basis. The conditions for the granting the concessions under the FTPZ Act do not seem clear and transparent being left at the discretion of the Minister of Finance to designate such FTPZ.

### d. Assessment by the experts

	1a	1b	2a	2b	3	4	5
<b>Grenada's Export Processing regime (GD006)</b>	V	V	V	V	?	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”

The normal corporate income tax rate in Grenada is 30% on the annual net profit of a company in excess of ECD 60,000. Companies approved under FTPZ Act are exempt from tax for a period of 60 years with the possibility for an extension of another 60 years.

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”

It could not be established whether the measure includes 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. 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.

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