



Council of the
European Union

Brussels, 15 March 2019
(OR. en)

7518/19

FISC 183

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Aruba's Special Zone San Nicolas regime (AW012)
– Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

This regime was repealed on 1st February 2018 with grandfathering until 31 December 2020.

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 AW012 regime in 2017 (standstill review)

Annex 2: Repeal of the old AW012 regime in 2018

Assessment of the old AW012 regime in 2017 (standstill)

Category:

Special economic zones

a. Description

With retroactive effect to January 1, 2013 a special zone has been created in San Nicolas, a town located in the south-east of Aruba and home of the former refinery. The beneficial policy introduces tax incentives for companies located inside of the designated special zone. The tax incentives are attractive for both foreign and local companies.

If a company qualifies as special zone company, the following tax incentives apply:

- 15% profit tax for activities particularly aimed on the local market.
- 10% profit tax for activities aimed for more than 75% on export and hotels.

Source: [PWC](#)

b. Preferential:

Yes

A lower CIT rate of 10 or 15 % is applicable.

c. Possible concern:

The regime may include ring-fencing elements because the lower CIT rate of 10% is applicable to companies which have exported more than 75%.

d. Assessment

	1a	1b	2a	2b	3	4	5
Aruba – Special Zone San Nicolas (AW012)	V	see 1a	V	see 2a	X	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 general CIT rate in Aruba is 25%. Profits derived by qualified company – special zone company¹ are taxed at lower rates of 2%, 10% or 15%. The measure therefore provides for a significantly lower level of taxation and is potentially harmful under the Code of Conduct.

Criterion 1 – Targeting non-residents:

“whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents”

The regime is available to residents as entrepreneur needs to be established in the designated area and needs to obtain a license from competent authorities and regime does not require beneficiaries to carry out transactions only with non-residents. However, requirement for “activities that are more than 75% aimed at exports and hotels” which are taxed at reduced rate of 10% prefers transactions with non-residents².

Criterion 2 – Ring-fencing:

“whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base”

This regime is not reserved exclusively to non-residents and therefore it is not completely isolated from the Aruban market so that it would not have any impact on the national tax base. However, as mentioned in Criterion 1 assessment (note 2), some activities affect national tax base in different way than other do. Despite the fact that regime is not completely isolated and, in some cases, it provides more preferable treatment to income that is generated mostly locally, there is a concern of “partial ring-fencing”. With regard to a) group of activities related to sustainable development, etc.

¹ In order to obtain benefits, Special zone companies must undertake, among others, these activities: activities particularly aimed at the local market (15%), activities that are more than 75% aimed at exports and hotels (10%), reinsurance companies (2%), activities related to sustainable development, green energy, and agriculture, provided that at least 75% of the sales revenue is local (2%), exemption from dividend WHT, 50% discount on the property tax payable for a period of five years and other non-CIT related incentives. Source: PwC

² On the other hand, 2% tax rate is granted with regard to profits generated from activities related to sustainable development, green energy, and agriculture, provided that at least 75% of the sales revenue is local. It means that lower preferential rate is granted to locally rendered services. Source: PwC

and b) group of activities aimed at exports and hotels, total numbers on quantity of benefiting taxpayers and amount of income qualifying for benefits could help us to evaluate whether this regime is “ring-fenced” in such a way that it has negative spill over effects on tax bases of other jurisdictions.

Criterion 3 - Substance:

“whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages”

In order to obtain benefits, company needs to obtain license from Aruba Financial Center (or from Central Bank of Aruba in case of reinsurance activities). Such a license stipulates minimal requirements:

1. Investment³ of AWG 150,000⁴ or AWG 1,000,000⁵.
2. Maintenance of at least AWG 30,000 a year over a period of five years.
3. Minimum number of employees - at least 3 employees (per AWG 1,000,000 turnover) or at least 9 employees for tourism related activities and heavy industries (increases with 3 employees every additional AWG 1,000,000 in turnover).
4. Annual contribution of AWG 1,200 or AWG 2,400 for cleaning, security, maintenance and other activities in the zone.
5. Additional substantial requirements apply for hotels.

Various anti-abuse measures are planned to be implemented into law (not effective yet). If we assume that IP related services are not in scope of this regime, adequate minimum requirements on substantial activities are set out in a manner that is consistent with criterion 3.

Criterion 4 – Internationally accepted principles:

“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”

A reduced rate (i.e. 2%, 10% or 15%) for qualified income (i.e. income generated from qualified activities) does not contradict any internationally accepted principle. In respect to this regime, we are not aware of any legislative or administrative measure that could be regarded not in line with criterion 4.

³ Qualified investments include investments in real estate, machinery, equipment, renovations, and inventory. Personnel and motor vehicle investments are excluded.

⁴ Retail, services, light industries, small tourism related activities, food & beverage industry, and agriculture, except if the entrepreneur is already established in the special zone.

⁵ Tourism related activities and heavy industries.

Criterion 5 - Transparency:

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

Pursuant to publicly available information, regime is fully set out and published in the relevant legislation and the practice should not involve any administrative discretion. In order to be entitled for tax benefits, company must obtain license from Aruba Financial Center or Central Bank of Aruba. License is granted under clearly established set of rules.

Overall assessment

“Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community”

With respect to available information and in light of the assessment made under all Code criteria, the regime is considered as **overall harmful** from a Code of Conduct point of view.

The main concerns which deviate from the Code of Conduct criteria relate to targeting of non-residents and ring-fencing features.

Note: this assessment is based only on publicly available information, as the Group did not dispose of translated legislation or more detailed information provided by Aruban officials. Sources:

<http://www.wtsaruba.com/aruba-tax-system/special-regimes/special-zone-san-nicolas/>

<http://www.pwc.com/an/en/publications/assets/snspecialzone.pdf>

<http://arina-aruba.com/ebooklet/guide/files/assets/common/downloads/Arina%20Brochure.pdf>

Repeal of the old AW012 regime in 2018



De minister van Financiën en Overheidsorganisatie

Maakt hierbij bekend dat onderdeel 1 van het Begunstigend Beleid van 28 juni 2013, te weten de Speciale zones te San Nicolas, door de Code of Conduct Group van de Europese Unie als “harmful tax competition” is aangemerkt en dat om te voorkomen dat Aruba wordt geplaatst op een lijst van “non-cooperative jurisdictions” deze Speciale Zone dient te worden ingetrokken.

In verband hiermede wordt onderdeel 1 van het Begunstigend Beleid van 28 juni 2013, te weten de Speciale Zones te San Nicolas met ingang van heden ingetrokken.

De rechtspersoon die beschikt over een erkenning als speciale zone vennootschap die is afgegeven voor de datum van ondertekening van het onderhavige besluit, kunnen gebruik maken van de (fiscale) faciliteiten voor deze vennootschappen tot uiterlijk 31 december 2020.

Oranjestad, 1 februari 2018

De minister van Financiën en Overheidsorganisatie,

A handwritten signature in blue ink, appearing to read 'X.J. Ruiz-Maduro'.

Mw. mr. X.J. Ruiz-Maduro