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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Dominica's International Business Companies - IBC regime (DM001) – Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

On 21 January 2019, with the International Business Company (Amendment) Bill 2019, Dominica has amended the International Business Companies regime repealing the preferential tax treatment for companies licensed as from 1 January 2019. For this reason, the Code of Conduct gateway criterion is not met as the regime does not provide for a significantly lower level of taxation. Therefore, the reformed regime falls out of the Code of Conduct's scope.

Grandfathering until 31 December 2021 has been provided to companies already benefitting from the regime, in line with the Code of Conduct requirements.

International Business Company (Amendment) Bill 2019:

http://www.dominica.gov.dm/bills-for-review/835-international-business-companies-amendment-act-2019

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 DM001 regime in 2017 (standstill review)

ANNEX 1

Assessment of the old DM001 regime in 2017 (standstill)

a. Description

Under Section 109 of the 1996 International Business Companies Act as amended in March of 1997, a Dominica registered International Business Company automatically receives a 20-year exemption from all taxes (including profit and capital gains), duties and similar charges.

Under Section 5 of the International Business Companies Act, for purposes of that Act, an International Business Company is a company that does not:

- Carry on business in Dominica with persons domiciled or resident in Dominica; or
- Own an interest in real property situate in Dominica other than an interest referred to in subsections (2)(e);
- Accept banking deposits; or
- Accept contracts of insurance

Source: CIPO[1], International Business Companies Act 1996

b. Preferential:

International business companies are exempt from tax. The normal tax rate is 25%.

c. Possible concern:

A regime limited to foreign tax payers and/or to operations outside the territory of the jurisdiction (ring fenced regime) does not meet criteria 1 and 2 of the Code of Conduct which forbid this type of ring fencing. The international business company regime seems targeted at activities with foreign entities/markets since tax advantages are granted only for transactions with persons that are not domiciled or resident in Dominica.

[1] Government of the Commonwealth of Dominica, Companies & Intellectual Property Office, International Business Companies Act March 1997.

d. Assessment

	1a	**1b**	**2a**	**2b**	**3**	**4**	**5**
Dominica – International Business Companies (DM001)	V	V	V	V	V	X	X

V = harmful

X = not harmful

<u>Explanation</u>

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 tax rate for companies in Dominica is 20%. Under Section 109 of the 1996 International Business Companies Act as amended in March of 1997, a Dominica registered International Business Company automatically receives a 20-year exemption from all taxes (including profit and capital gains), duties and similar charges. The measure therefore provides for a significantly lower level of taxation and is potentially harmful under the Code.

Criterion 1 – Targeting non-residents:

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

Under Section 5 of the International Business Companies Act, for purposes of that Act, an International Business Company is a company that does not:

- <u>Carry on business in Dominica with persons domiciled or resident in Dominica; or</u>
- Own an interest in real property situate in Dominica other than an interest referred to in subsections (2)(e);
- Accept banking deposits; or
- Accept contracts of insurance

1a) The international business company regime seems targeted at activities with foreign entities/markets since tax advantages are granted only for transactions with persons that are not domiciled or resident in Dominica. Therefore, we consider that the measure is clearly caught by criterion 1a.

1b) The measure is not available for transactions with persons domiciled or resident in Dominica.

Criterion 2 – Ring-fencing:

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

The international business company regime seems targeted at activities with foreign entities/markets since tax advantages are granted only for transactions with persons that are not domiciled or resident in Dominica. Since the income of non-domiciled or non-resident persons are not taxable in Dominica, the advantages are ring-fenced from the domestic market and thus, does not, affect the national tax base.

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*"

The measure does not include any express requirement for real economic activity or substantial economic presence.

Criterion 4 – Internationally accepted principles:

A tax exemption does not contradict any internationally embraced principle.

Criterion 5 - Transparency:

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

The measure is fully set out and published in the relevant legislation and the practice should not involve any administrative discretion.

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*"

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:

- The international business company regime seems **targeted at activities with foreign entities/markets** since tax advantages are granted only for transactions with persons that are not domiciled or resident in Dominica.

- The measure **does not include any express requirement for real economic activity or substantial economic presence**.