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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Dominica's Offshore Banking regime (DM002)
– Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

On 21 January 2019, with the Offshore Banking (Amendment) Bill 2019, Dominica has amended the Offshore Banking regime repealing the preferential tax treatment for companies licensed as from 1 January 2019. As a result, the regime does not provide for a significantly lower level of taxation and the Gateway criterion of the Code is not met. Therefore, the reformed regime falls out of the Code of Conduct's scope.

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

Offshore Banking (Amendment) Bill 2019:

<http://www.dominica.gov.dm/bills-for-review/836-offshore-banking-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 DM002 regime in 2017 (standstill review)

Assessment of the old DM002 regime in 2017 (standstill)

a. Description

Under the 1996 Offshore Banking Act, a licensee under that Act is exempt from tax in respect of offshore banking business carried on within Dominica. The tax exemption is only available for transactions with non-residents.

According to the same Act, “offshore banking business” means business conducted exclusively in currencies other than East Caribbean dollars. The licensee must separate its offshore banking activities from its other activities in Dominica and keep separate records of its offshore banking business. A licensee is also prohibited – except with written approval of the Minister – to knowingly accept or keep a resident of Dominica as a customer for any of its offshore banking services.

Source: Offshore Banking Act 1996

b. Preferential features

Offshore banks are exempt from tax. The normal tax rate is 25%.

c. Possible concerns

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 offshore banking regime seems targeted at activities with foreign entities/markets since tax advantages are granted only for transactions with non-residents.

d. Assessment

	1a	1b	2a	2b	3	4	5
Dominica – Offshore Banking (DM002)	V	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 general tax rate for companies in Dominica is 20%. Under the 1996 Offshore Banking Act, a licensee under that Act is exempt from tax in respect of offshore banking business carried on within Dominica. 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”

According to the Offshore Banking Act, “offshore banking business” means business conducted exclusively in currencies other than East Caribbean dollars. The licensee must separate its offshore banking activities from its other activities in Dominica and keep separate records of its offshore banking business. A licensee is also prohibited – except with written approval of the Minister – to knowingly accept or keep a resident of Dominica as a customer for any of its offshore banking services.

1a) The offshore banking regime seems targeted at activities with foreign entities/markets since tax advantages – unless written approval is given by the Minister - are granted only for transactions with persons that are not 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 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 offshore banking regime seems targeted at activities with foreign entities/markets since tax advantages – unless written approval is given by the Minister - are granted only for transactions with persons that are not resident in Dominica. Since the income of 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. Additionally, the measure includes “highly-mobile” activities, namely financial services activities.

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 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 generally set out and published in the relevant legislation. However, it includes one element of administrative discretion. According to the legislation, it is possible for a licensee to get written approval of the Minister to accept or keep a resident of Dominica as a customer for any of its offshore banking services. The conditions for getting such a written approval are not laid down in the legislation. This leaves the possibility open for the Minister to grant this written approval to companies at his own discretion. On the basis of the above we do not consider the measure to be transparent.

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 offshore banking regime seems **targeted at activities with foreign entities/markets** since tax advantages are granted only for transactions with persons that are not resident in Dominica.
 - The measure **does not include any express requirement for real economic activity or substantial economic presence.**
 - The measure leaves the **possibility open for the Minister to grant written approval** to offshore banking licensees to accept or keep residents as customers **at his own discretion.**
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