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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Dominica's General Incentive under the Fiscal Incentives Act - FIA regime (DM003) – Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

Dominica has amended the Fiscal Incentives Act, Chapter 84:51, through the Fiscal Incentives (Amendment) Act 2019:

http://www.dominica.gov.dm/bills-for-review/834-fiscal-incentives-amendment-act-2019

Below is the assessment of the new DM003 regime by the Code of Conduct Group:

	1a	1b	2a	2b	3	4	5
Dominica – General incentive under Fiscal Incentives Act (FIA)	X	?	X	?	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 standard corporate income tax rate is 25 %. A qualified company benefitting from the regime is granted a full tax exemption for 15 years. 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*"

The measure is de lege available to both residents and non-residents and does not require that the beneficiaries to carry out transactions only with non-residents.

Criterion 2 – Ring-fencing:

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

The considerations under criterion 1 should also be extended to criterion 2.

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*"

According to the standard practice for the evaluation of a measure against criterion 3, a measure is found harmful if there are no specific requirements with regard to real economic activities, notably no requirement with respect to employment obligations.

Under Art. 2 of the Fiscal Incentive Act, as amended, an enterprise is a qualifying enterprise only if the primary activity of the enterprise is physically carried out in Dominica. The activities included in the list of qualified activities are non-highly mobile activities and require a real economic activity taking place or substantial economic presence in Dominica, in particular with regard to job creation.

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*"

The measure 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*"

All preconditions necessary for the granting of a tax benefit should be clearly laid down in publicly available laws, decrees, regulations etc. before a measure can be considered transparent.

Art. 5 and 8, as amended, and Art. 8A of the Fiscal Incentive Act fully set out the conditions for a company to be granted the regime. The practice should therefore not involve any administrative discretion.

Grandfathering

Dominica did not include any grandfathering provision for companies previously benefitting from the Fiscal Incentive Act regime. The law therefore applies as of 1 January 2019 to companies that benefited from the regime before the reform.

Overall Assessment

In the light of the assessment made under all Code criteria, the regime is considered as not harmful under the Code of Conduct.

The Code of Conduct Group meeting of 30 January 2019 approved the rollback of the old DM003 regime. This conclusion was endorsed by the ECOFIN Council on 12 March 2019.

Annex 1: Assessment of the old DM003 regime in 2017 (standstill review)

ANNEX 1

Assessment of the old DM003 regime in 2017 (standstill)

a. Description

Under the Fiscal Incentives Act (FIA), the Minister may grant incentives to companies for a limited period of time, that are specified in an Order, i.e. an act through which an incentive is granted to a certain company. The incentives may be granted provided that an enterprise is beneficial to the economy of Dominica (articles 5 and 6 of the Fiscal Incentives Act). A complete or partial exemption from income tax may be granted for a period not longer than 10, 12 or 15 years, depending on the classification of the company, as provided by article 13 of the Fiscal Incentives Act.

Companies may apply for the incentive through an application to be submitted in writing to the Minister with information regarding the business, such as the nature of the enterprise, the contribution it is expected to make to the economy, the number of persons employed, the area where it will be located, etc. (article 8 of the Fiscal Incentives Act).

Source: Fiscal Incentives Act

b. Preferential:

Companies may be granted complete or partial exemption from income tax for a period from 10-15 years, depending on the classification of the company. The normal tax rate is 25 %.

c. Possible concern:

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 not laid down in law but granted on a discretionary basis. The Fiscal Incentives regime does not seem transparent to the extent that the Minister may grant a complete or partial exemption on a discretionary basis since the exact requirements for getting the benefits are not laid down in law.

d. Assessment

	1a	**1b**	**2a**	**2b**	**3**	**4**	**5**
Dominica – General Incentive under Fiscal Incentives Act (FIA) (DM003)	X	?	X	?	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*"

The general tax rate for companies in Dominica is 20%. Companies may be granted complete or partial exemption from income tax for a period from 10-15 years, depending on the classification of the company. 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*"

1a) The incentives may be granted provided that an enterprise is beneficial to the economy of Dominica (articles 5 and 6 of the Fiscal Incentives Act). The measure is *de lege* available to both residents and non-residents and does not require that the beneficiaries carry out transactions only with non-residents.

1b) There is no data available to show in which cases (e.g. foreign/domestically owned companies) the tax benefits have been granted.

Criterion 2 – Ring-fencing:

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

2a) The incentives under the Fiscal Incentives Act does not seem targeted at activities with foreign entities/markets since tax advantages are granted for transactions with persons that are resident in Dominica. Income is generally taxable in the hands of resident taxpayers. Thus, it is included in the national tax base and where the measure is applied to (an exemption is granted to) residents it has an impact on the national tax base.

2b) There is no data available to show in which cases (e.g. foreign/domestically owned companies) the tax benefits have been granted.

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 incentives may be granted provided that an enterprise is beneficial to the economy of Dominica (articles 5 and 6 of the Fiscal Incentives Act). Companies may apply for the incentive through an application to be submitted in writing to the Minister with information regarding the business, such as the nature of the enterprise, the contribution it is expected to make to the economy, the number of persons employed, the area where it will be located, etc. (article 8 of the Fiscal Incentives Act). The application of this measure explicitly requires productive (or active) investment.

Criterion 4 – Internationally accepted principles:

A complete or partial 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*"

In order for the tax benefits to be granted, a written application must be submitted to the Minister. The Fiscal Incentives regime does not seem transparent to the extent that the Minister may grant a complete or partial exemption on a discretionary basis since the exact requirements for getting the benefits are not laid down in law. This leaves the possibility open for the Minister to grant incentives 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 concern which deviates from the Code of Conduct criteria relates to the fact that the Fiscal Incentives regime **does not seem transparent** to the extent that **the Minister may grant a complete or partial exemption on a discretionary basis** since the exact requirements for getting the benefits are not laid down in law.