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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
 To: Code of Conduct Group (Business Taxation)
 Subject: Belize's Export Processing Zones - EPZ enterprises regime (BZ002)
 – Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

The old Export Processing Zone regime was considered harmful by the Code of conduct Group. Belize has reformed the regime with the Designated Processing Areas Act, 2018 (see ADD 1 + ADD 2).

	1a	1b	2a	2b	3	4	5
Belize – Designated Processing Areas (formerly called Export Processing Zones)	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 general income tax rate in Belize is 25%.

The income tax payable is reduced by the amount of business tax payable at the rate of 3% of all gross contract payments in excess of BZD 3,000.

Companies operating in a designated processing area are taxed at a special rate of 3% up to 3,000,000 BZD and at the rate of 1.75% above 3,000,000 BZD (Section 4 of the Income and Business (Amendment) Act).

Companies operating in a designated processing area are exempt from business tax (Section 7 of the Income and Business (Amendment) Act).

The measure therefore provides for a significantly lower level of taxation and is potentially harmful under the Code.

Criteria 1 and 2

The regime is now open to all entities regardless of whether they are foreign or domestic and regardless of whether their income is foreign or domestic.

Information was requested from Belize in order to assess potential de facto ring-fencing. To date, Belize did not provide such data.

Criterion 3

Under Section 10(1)(c), a company shall be eligible for DPA status if the company commits in its application that the proposed business will generate a minimum capital investment and under Section 10(3)(c), the company shall demonstrate that it has a detailed plan for the training and transfer of knowledge to the employees of the company.

DG TAXUD asked to Belize to clarify the substance requirements checked by the DPAC for granting a company a DPA status.

Belize confirmed that there would be a minimum investment of \$500,000 for new applications. No other specific substance requirements are included in the Act.

Belize provided the list of companies already existing in EPZ as of 2017 together with the number of employees per company.

There are currently 70 companies operating in an EPZ/DPA:

- 15 companies engaged in agro-processing (2 suspended or ceased operations and 1 in construction phase) with a total of 836 employees (average of 70 employees per active company);

- 18 companies engaged in aquaculture (4 suspended or ceased operations and 1 in construction phase) with a total of 531 employees (average of 41 employees per active company);
- 9 companies engaged in manufacturing activities (4 suspended or ceased operations and 1 in construction phase) with a total of 71 employees (average of 18 employees per active company);
- 18 companies engaged in services (5 suspended or ceased operations) exclusively in data or voice processing including customer service support¹ with a total of 2161 employees (average 166 employees per active company);
- 3 casinos (1 ceased operations) with a total of 453 employees (average of 226 employees per active company);
- 8 EPZ developers (6 suspended or ceased operations) with a total of 4 employees (average of 2 employees per active company).

According to the 2018 guidance on criterion 3 of the Code of Conduct, when (i) a regime grants tax benefits to activities such as manufacturing or production, (ii) the qualifying activities necessary to benefit from the regime do not include any highly mobile activities or (iii) the benefits of the regime are directly linked to investment in tangible assets, the regime does not a priori raise concerns under criterion 3 of the Code of Conduct.

Criterion 4

The provisions of the DPA Act do not contain such elements that would be relevant from the point of view of internationally accepted principles as referred to in criterion 4 of paragraph B of the Code.

Criterion 5

Approved activities in a DPA are not listed in the legislation but are defined as economic activities declared as a national priority sector by the Minister in accordance with the National Plan or any other plan or policy of the government.

The Commission services asked for clarification as to what the national priority sectors will be, as it may entail a risk of discretionary power by the Ministry.

Belize explained that no mobile activities could be carried out in an EPZ/DPA. Activities that can be allowed in an EPZ/DPA are defined in the Act as economic activities within a priority sector declared by the Minister in accordance with the National Plan or any other plan or policy of the government. Belize confirmed by email that the national priority sectors allowed under the Designated Processing Areas Act include:

¹ One entity was engaged in online banking services and general financial services but this entity suspended its operations.

- Agro-processing;
- Aquaculture;
- Data processing including business process outsourcing, knowledge process outsourcing, etc.;
- Manufacturing;
- Developer of an industrial or business park (developer).

This list is mentioned in Belize Growth and Sustainable Development Strategy 2016-2019.

Belize confirmed that an upcoming regulation to be published next month will make a specific reference to this limitative list of national priority sectors that can be allowed in a DPA and do not include any mobile activities. Belize however confirmed that the list can be modified by the Government through an amendment of the Regulation.

The lack of transparency in the Act and the possibility to amend the list by regulation is balanced by the upcoming clarification in the future Regulation as to the activities allowed.

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 BZ002 regime. This conclusion was endorsed by the ECOFIN Council on 12 March 2019.

Annex 1: Assessment of the old BZ002 regime in 2017 (standstill review)

Assessment of the old BZ002 regime in 2017 (standstill)**a. Description**

Information available at:

http://www.sice.oas.org/Investment/NatLeg/BEL/Export_ProcsZone_e.pdf

The Export Processing Zone Act (EPZ) provides for the establishment and operation of an export processing zone within Belize in order to promote economic growth and development, stimulate investment and create employment opportunities. It aims to boost exports of non-traditional manufactured products. Incentives available to investors who have obtained a certificate of compliance under the Act include:

- a 20-year exemption from income tax and business tax, with an option to extend this exemption for a further period; **Belize: Section 12(1) of the EPZ Act]**
- losses incurred in the tax holiday period may be carried forward for offset against business profits for a period of 5 years following the tax holiday; **[Belize: Section 12(3) of the EPZ Act]**
- exemption from real property taxes; **[Belize: Section 12(5) of the EPZ Act]**
- goods and services sold by an EPZ enterprise outside the Belize customs territory are exempt from general sales tax and excise tax; **[Belize: Section 12(6) of the EPZ Act]**
- dividends paid by an EPZ enterprise are exempt from business tax and income tax; **[Belize: Section 12(1) of the EPZ Act]**
- imports into and exports from an EPZ enterprise are exempt from customs duties and other similar taxes; and **[Belize: Section 9(2) and 9(6) of the EPZ Act]**
- proceeds from the sale of stock or other complete ownership interests in an EPZ enterprise are not subject to any tax on capital gains. **[Belize: Section 12(4) of the EPZ Act; although Belize does not have Capital Gains Tax]**

EPZ enterprises, however, are subject to foreign currency regulations, including the Exchange Control Regulation Act (Cap. 43), and liable to pay business tax at the rate of 2%.

A “social fee” is levied at a rate of 5% on the value of all goods/services imported into EPZ.

According to paragraph 7, subparagraph 5, of the Export Processing Zone Act Chapter 280 – Revised Edition 2000 – “*The lessee may conduct a domestic Belizean business on the leased property [from an EPZ Developer] under the established Laws of Belize without any of the benefits or advantages created under this Act for EPZ businesses*”.

Moreover, paragraph 8, subparagraph 3, provides that “*An EPZ business shall not sell, lease or transfer any article, item, goods, or service in Belize outside an EPZ, or to any resident of Belize or any domestic Belize business enterprise. The EPZ, with the concurrence of the Ministry, may provide waivers to this restriction upon application at its discretion. An EPZ business shall be free to sell, lease or transfer any article, item, goods, or service in an EPZ or outside Belize to other EPZ businesses, to foreign businesses, or to foreign individuals.*”

b. Preferential features/ Benefits available under the EPZ

The standard income tax rate in Belize is of 25% on the chargeable income. However, the income tax payable is reduced by the amount of business tax payable and if the income tax assessed exceeds the business tax liability, the difference is written off and there is no additional liability.

EPZ Enterprises benefit of a 20-year exemption from income tax and business tax, with an option to extend this exemption for a further period. Other direct tax benefits are available, such as exemption from income tax in respect of dividend payments, or of capital gains.

Belize corrected this information: In 1998, Income Tax on Net Profits of companies was replaced by Business Tax regime (only one company is still under de former regime, Belize Natural Energy Limited). The corporate income tax is charged upon gross receipts, without any deductions; the rates range from 0.75% to 25%, according to the source of the income; there is an obligation of declaration monthly. The law provides for any “excess of Business Tax” paid over Income Tax payable to be set off as an expense for Income Tax purposes; however, if the Income Tax payable is greater than the Business Tax, this deduction doesn’t apply.

c. Possible concerns/ What is the problem under the Code?

Our understanding of Belize legislation is that the EPZ regime seems targeted to foreign enterprises and/ 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.

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

Sources of information

IBFD; [HTTP://WWW.BELIZEOFFSHOREINVESTORS.COM/INV8.HTML](http://www.belizeoffshoreinvestors.com/inv8.html)

Belize stated that the Export Processing Zone Act does not discriminate between local and foreign investors; currently, several EPZ companies are either fully or majority owned by Belize principals. However, Belize acknowledged that the regime was enacted early in the Eighties to stimulate the production of value added products and services for the export market; notwithstanding, is currently revising the programme to eliminate the “export requirement”, so as to fully comply with WTO’s Agreement on Subsidies and Countervailing Measures.

d. Assessment:

Criterion	1a	1b	2a	2b	3	4	5	Overall assessment
Belize - EPZ (BZ002)	V	V	V	V	V	X	X	Harmful

V = harmful

X = not harmful

Explanation:

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 company operating within the ambit of EPZ benefits from a 20-year exemption from income tax and business tax, with an option to extend this exemption for a further period; in addition to other tax benefits. The measure therefore provides for a significantly lower level of taxation and is potentially harmful under the Code.

Criterion 1

“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).

EPZ is *de lege* available to both residents and non-residents, but it is only applicable to transactions carried out only with non-residents.

Criterion 2:

“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.

The EPZ regime is targeted at activities with foreign entities/markets since tax advantages are granted only for transactions with persons that are not domiciled or resident in Belize. Thus, the tax advantages are ring-fenced from the domestic market and, consequently, do not, affect the national tax base.

Criterion 3:

“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 under this criterion if there are no specific requirements with regard to real economic activities and notably any requirement with respect to employment obligations.

The measure does not include 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”

A tax exemption does not contradict any internationally embraced principle.

Criterion 5:

“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.

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

Overall assessment:

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; notwithstanding Belize is currently revising the regime.
