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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Barbados' Fiscal Incentives regime (BB008)
– Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

On 19 November 2018, Barbados provided information that the Fiscal Incentive (Repeal) Act, 2018 had been adopted on 10 September 2018. The legislation entered into force as of 2 January 2019 and contains no grandfathering provisions. It can therefore be considered as abolished.

<https://www.barbadosparliament.com/bills/details/288>

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 BB008 regime in 2017 (standstill review)

Assessment of the old BB008 regime in 2017 (standstill)

a. Description

Under the Fiscal Incentives Act, *an approved company* may obtain the following incentives:

- a tax holiday for a period of 11-15 years;
net losses in the tax holiday period can be carried forward for 9 years following the tax holiday period;
- exemption from tax of dividends paid during the holiday period; and
- limited exemption during the holiday period from customs duty

Source: [IBFD](#)

b. Preferential:

Yes, exemption from tax during the tax holiday period of 11-15 years.

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 conditions under which a company is considered as approved according to the Fiscal Incentives Act are not clearly set

d. Assessment :

	1a	1b	2a	2b	3	4	5
Barbados – Fiscal incentives act (BB008)	X	X	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 Barbados is 25% for regular companies and 15% for small companies. The Fiscal Incentives Act offers a tax holiday of between 11 and 15 years in respect of income from sale of manufactured products. Dividends paid from profits accruing from the manufacture of approved products during the period of the tax holiday are exempt when paid to a resident in a CARICOM state. Such dividends paid to a non-CARICOM resident are exempt from Barbados tax to the extent such tax would exceed the tax liability in their country of source. 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 Fiscal Incentives Act does not contain any restrictions on the ownership of companies benefiting from the regime. Concerning the eligibility of transactions the Fiscal Incentives Act provides a maximum 15-year tax holiday to any manufacturer of an approved product, provided that it meets the definition of an enclave enterprise: manufacturing exclusively for export outside of CARICOM; manufacturing approved products containing a specified percentage of local value added; or being highly capital intensive. Enclave enterprises are granted a tax holiday of 15 years without any restrictions. Benefit is also granted to “Group I Enterprises” (enterprise in respect of which the local value added is at least 50 per cent of the amount realised from the sales of an approved product), “Group II Enterprises” (enterprise in respect of which the local value added is at least 25 per cent but less than 50 percent of the amount realised from the sales of an approved product) and “Group III Enterprises” (enterprise in respect of which the local value added is at least 10 per cent but less than 25 per cent of the amount realised from the sales of an approved product). In these cases tax holiday is granted for 15, 13, respectively 11 years.

We have no reason to believe that the measure is predominantly accorded in respect of transactions carried out 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”

As regards criterion 2a the measure in principle is available to both resident and non-resident companies.

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 potentially harmful measures against criterion 3, a measure is generally caught by this criterion if there are no express requirements with regard to real economic activities and notably any requirement with respect to employment obligations. Although such express requirements are not in place for the measure in question it should be taken into account that the tax benefits are directly linked to manufacturing. We therefore at this moment in time do not consider the measure to fall foul of 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 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”

We understand that in order to obtain the benefits of the measure the application by a company has to be approved by the Minister responsible for Industry. The grounds for accepting or rejecting the application are not clear and thus give the above mentioned Minister discretionary powers. Subject to section 10 of the Fiscal Incentives Act the minister has an absolute discretion to grant or refuse approval in respect of a product as an approved product or an enterprise as an approved enterprise. Therefore 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”

The measure provides for an effective lower level of taxation than normally applies in Barbados and the measure is not transparent.

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.