078466/EU XXVI. GP
Eingelangt am 17/10/19

Council of the European Union

Brussels, 16 October 2019
(OR. en)

13209/19

FISC 397

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group
Subject:	Mauritius' Manufacturing activities under the Freeport zone regime (MU012) – Final description and assessment

ROLLBACK REVIEW PROCESS (SEPTEMBER 2019)

On July 25 2019, the Mauritian Parliament adopted the Finance Bill 2019 which includes amendments to the relevant legislation[1]. On 16 August 2019, Mauritius subsequently adopted additional regulations to complete the legal framework of the regime[2].

These amendments were assessed as follows by the COCG at its meeting of 13 September 2019:

	1a	1b	2a	2b	3	4	5
Mauritius – Manufacturing Activities under the Freeport Zone regime (MU012)	X	?	X	?	X	X	X

V = harmful
X = not harmful

[1] http://mauritiusassembly.govmu.org/English/bills/Documents/intro/2019/bill1619.pdf
[2] http://pmo.govmu.org/English/News/Pages/Cabinet-Decisions-taken-on-16-AUGUST-2019.aspx

www.parlament.gv.at

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 in Mauritius is 15%. According to the Finance Bill 2018 a Freeport licenced entity was subject to 3% CIT rate in line with Section 44B of the Income Tax Act for a list of qualified activities, according to an apportionment formula. However, the Finance Bill 2019 amended Section 44B clarifying that Freeport activities are subject to the headline corporate income tax rate. The regime is therefore not preferential anymore. However, for sake of completeness and as Mauritius introduced also other relevant changes in the legislation through regulation, an analysis of the new provisions is provided in the following sections.

Criterion 1 – Targeting non-residents:

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

The Freeport act as amended on 09.08.2018 no longer distinguishes between transactions with resident and non-resident in order for the tax reduction to be granted.

For what concerns the *de facto* effects of the measure, there is insufficient information to assess, given that the nature of the activities that can be carried out by a Freeport licenced company has substantially changed, with a more limited batch of activities that can be carried out.

Criterion 2 – Ring-fencing:

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

The reduced corporate income tax rate foreseen by Section 44B of the Income Tax Act for export activities for Freeport licensees has been repealed by Section 24 of the Finance Bill 2019.

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 Regulations 23G made by the Minister under sections 4 and 24 of the Freeport Act 2004 and under section 161 of the Income Tax Act, Freeport operators have to satisfy the following substance requirements:

- employ a minimum of 5 staff;
- incur an annual expenditure of more than MUR 3.5 m.

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.

www.parlament.gv.at

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.

The conditions for a Freeport licence to be granted are laid down by the law and no administrative discretion seems to apply.

Grandfathering

Mauritius did not include any grandfathering provision for companies previously carrying out manufacturing activities. The law is applicable to companies that benefited from the previous Freeport regime until 14 June 2018. Only the substance requirements have become applicable as from 1 July 2019.

Overall Assessment

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

The Code of Conduct Group meeting of 13 September 2019 approved the rollback of the MU010 regime. This conclusion was endorsed by the ECOFIN Council on 10 October 2019.

Annex 1: Assessment of the old MU012 regime in 2018 (standstill review)

www.parlament.gv.at

Annex 1: assessment of the old MU012 regime in 2018 (standstill)

	1a	1b	2a	2b	3	4	5
Mauritius – Manufacturing Activities under the Freeport Zone regime (MU012)	X	?	V	?	V	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 tax rate in Mauritius is 15%. However, pursuant to the reform enacted by the Financial Bill 2018, a Freeport licenced entity is subject to 3% CIT rate in line with Section 44B of the Income Tax Act for a list of qualified activities, according to an apportionment formula. Although other special tax measures apply, the measure provides for a significant lower level of taxation and deserves an assessment under the Code.

www.parlament.gv.at

Criterion 1 – Targeting non-residents:

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

The Freeport act as amended on 09.08.2018 does not distinguish anymore between transactions with residents and non-residents in order for the tax reduction to be granted.

For what concerns the *de facto* effects of the measure, there is insufficient information to assess, given that the nature of the activities that can be carried out by a Freeport licenced company has substantially changed, with a more limited batch of activities that can be carried out.

Criterion 2 – Ring-fencing:

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

The Freeport act as amended on 09.08.2018 does not exclude residents from the scope of the beneficiaries of the preferential tax treatment. However, the reduced corporate income tax rate applies only to export activities.

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 Freeport act as amended on 09.08.2018 does not set forth substance requirements to be met in order for the tax advantage to be claimed.

www.parlament.gv.at

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.

The conditions for a Freeport licence to be granted are laid down by the law and no administrative discretion seems to apply.

Grandfathering

Mauritius did not include any grandfathering provision for companies previously carrying out manufacturing activities. The law is applicable to companies that benefited from the previous Freeport regime until 14 June 2018.

Overall Assessment

In the light of the assessment made under all Code criteria, the regime is considered as overall harmful.

---

www.parlament.gv.at