



Brussels, 30 April 2020
(OR. en)

7416/20

FISC 83

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Antigua and Barbuda's Free Trade and Special Economic Zone (FTZ) – Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2020)

On 31 December 2019, Antigua and Barbuda adopted:

- the Special Economic Zone (Amendment) Act, 2019;

<http://laws.gov.ag/wp-content/uploads/2020/02/No.-27-of-2019-SPECIAL-ECONOMIC-ZONE-AMENDMENT-ACT-2019.pdf>

- Free Trade and Processing Zone (Amendment) Act, 2019;

<http://laws.gov.ag/wp-content/uploads/2020/02/No.-28-of-2019-FREE-TRADE-AND-PROCESSING-ZONE-AMENDMENT-ACT-2019.docx.pdf>

- Investment Authority (Amendment) Act, 2019;

<http://laws.gov.ag/wp-content/uploads/2020/02/No.-29-of-2019-INVESTMENT-AUTHORITY-AMENDMENT-NO.-2-ACT-2019..pdf>

These amendments were assessed as follows at the Code of Conduct Group (business taxation) (COCG) meeting of 4 February 2020:

	1a	1b	2a	2b	3	4	5
Antigua and Barbuda –	X	?	X	?	X	X	X

V = harmful

X = not harmful

The conclusion was endorsed at the ECOFIN meeting of 18 February 2020.

Annex 1: Assessment of the AG003 regime in 2018 (standstill)

Explanation

In 2018, the COCG found that Antigua and Barbuda's tax system failed to meet listing criterion 2.1 with regard to the Free Trade and Special Economic Zone regime (FTZ). The FTZ regime was found harmful because it was ring-fenced, it lacked of substance requirements and was not transparent. In December 2018, Antigua and Barbuda committed to addressing the identified shortcomings and was therefore included in Annex II of ECOFIN Council conclusions in March 2019.

Free trade zones

Description

Free trade zones and special economic zones could be established in Antigua and Barbuda to carry out manufacturing or commercial activities. Such activities were fully exempted from CIT. As of 1 January 2020, the Antigua and Barbuda Investment Authority started to manage the applications of companies in all of these zones.

For specific special economic zones (Paradise Found, Yida) additional regulations were applicable. However, these were subject to the legal framework imposed by the FTZ/SEZ legislation, and there will no longer be references to tax concessions in these additional regulations. Therefore, they are covered by the FTZ/SEZ assessment above.

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 Antigua is 25%. However, pursuant to section 14 of the Free Zones Act, companies operating in a free trade zone were fully exempt from corporate taxation as prescribed by the First Schedule of the Investment Authority Act 2006, as amended in 2019. Therefore, the measure provided for a significantly lower level of taxation and was therefore assessed 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 Art. 3, 4 and 5 of the of the Special Economic Zone (Amendment) Act, which have amended, respectively, sections 5, 21 and 23 of the Special Economic Zone Act 2015, a company may establish in a free trade zone/special economic zone regardless of whether it is a resident or non-resident company, as long as this is beneficial for Antigua and Barbuda’s economy. Therefore the regime is no longer harmful in terms of criterion 1. As regards criterion 1b) there are no data available at this stage, hence a question mark (“?” - insufficient information to assess).

Criterion 2 – Ring-fencing:

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

According to Art. 3, 4 and 5 of the of the Special Economic Zone (Amendment) Act, which have amended, respectively, sections 5, 21 and 23 of the Special Economic Zone Act 2015, a company may establish in a free trade zone/special economic zone regardless of whether it is a resident or non-resident company, as long as this is beneficial for Antigua and Barbuda’s economy. Therefore the regime is no longer harmful in terms of criterion 2. As regards criterion 1b) there are no data available at this stage, hence a question mark (“?” - insufficient information to assess).

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”

Amendments to the First Schedule of the Investment Authority Act 2006, which now cross-references to the FTZ/SEZ legislation, prescribe that incentives can only be granted if substance requirements outlining real economic presence in the jurisdiction are met. This includes the obligation for minimum job creation, minimum capital creation and minimum management in Antigua and Barbuda. The substance requirements are progressively proportionate to the level of the investment.

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 agreed principle.

Criterion 5 - Transparency:

“whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way”

Amendment to Sections 5 and 21 of the Special Economic Zone Act 2015, and the cross reference to the procedure laid down in the Investment Authority Act 2006 to grant concessions, make sure that concessions can only be authorised as laid down by the law and no discretionary power is attributed to the administration or competent minister.

Grandfathering

No grandfathering has been introduced for the regime. The provisions are applicable as of 1 January 2020 for companies already benefitting from the regime and newly licensed companies.

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”

As the FTZ regime has been amended in line with the COCG criteria, Antigua and Barbuda has met their commitment and is compliant with criterion 2.1. In the light of the assessment made under all COCG criteria, the regime can be considered as not harmful.

Assessment of the AG003 regime in 2018 (standstill)**"Free Trade Zones" regime****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 Antigua is 25%. However, pursuant to section 14 of the Free Zones Act, companies operating in a free trade zone are fully exempted from corporate taxation. Therefore, the measure provides for a significant lower level of taxation and deserves an assessment under the Code.

	1a	1b	2a	2b	3	4	5
Antigua and Barbuda - Free trade zones (Paradise Found Act, Yida Act, Free Trade Zone Act, Special Economic Zone Act) (AG003)	V	?	X	?	V	X	V

V = harmful

X = not harmful

Explanation:**Criterion 1 – Targeting non-residents:**

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

The law sets forth that a company may benefit from the tax exemption only in relation to goods, articles, machinery or other things manufactured, processed, assembled by a licensee and exported out of the free trade and processing zone into a non-free trade and processing zone if they are exports from a non-CARICOM country into Antigua and Barbuda or imports into Antigua and from a non-CARICOM country and in relation with transaction with non-resident.

Criterion 2 – Ring-fencing:

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

According to the various pieces of legislation for the establishment and management of the Free Trade Zones/Special Economic Zones, companies allowed to operate in the Free Trade Zone are exempted from business income tax for activities which do not relate to Antigua and Barbuda.

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”

In the legislation, there is no reference to requirements that a company should fulfil in order to apply to the regime.

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 to create and manage a Free Trade Zone or a Special economic zone are not entirely laid down in the law as residual discretionary power is attributed to the competent Minister in order to grant a licence or require additional criteria to be fulfilled.

Overall Assessment

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