



Brussels, 30 April 2020
(OR. en)

7419/20

FISC 86

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Cook Islands' International Insurance Companies regime (CK002)
– Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2020)

On 17 December 2020 Cook Islands adopted the Insurance Amendment Act 2019 (see doc. 7419/2020 ADD 1) and the Insurance Amendment Regulations 2019 (see doc. 7419/2020 ADD 2). These amendments repeal CK002 as of 1 January 2020.

The Code of Conduct Group (business taxation) (COCG) meeting of 4 February 2020 approved the rollback of the regime. This conclusion was endorsed by the ECOFIN Council on 18 February 2020.

ADD 1: Insurance Amendment Act 2019

ADD 2: Insurance Amendment Regulations 2019

Annex 1: Assessment of the CK002 regime in 2017 (standstill)

Explanation

Insurance Amendment Act 2019 repealed Art. 8 of the Insurance Act 2008, which included a reference to Category C insurance licenses, whose treatment was preferential and with harmful tax features. No grandfathering has been foreseen as there were no companies benefitting from this regime. As companies cannot be licensed any longer as international insurer for former Category C, the regime should be considered as abolished.

Assessment of the CK002 regime in 2017 (standstill)

International Insurance Companies (CK002)

a. Description

Under Section 8 of the 2008 Insurance Act, there are three categories of licences.

- Category A - incorporated under the Companies Act (insurance business including domestic business)
- Category B - for external insurer carrying on insurance business in the Cook Islands that forms a branch office. This entitles the holder to carry on domestic insurance business (“External insurer” means an insurer incorporated, constituted or formed outside the Cook Islands).
- Category C - only issued to a company incorporated under the International Companies Act 1981-1982. The license entitles the holder to carry on international business only (“International business means insurance business that is not domestic business).

According to Section 249 of the International Companies Act, international companies are exempt from taxation. Insurance companies that hold a category C license are therefore exempt from tax.

Source: International Companies Act 1981-82, 2008 Insurance Act

b. Preferential features

International insurance companies are exempt from tax. The normal tax rate is 20 %.

c. Possible concerns

A regime limited to foreign tax payers and/or to operations outside the territory of the jurisdiction (ring fenced regime) does not meet criteria 1 and 2 of the Code of Conduct which forbid this type of ring fencing. The International Insurance Companies regime seems targeted to foreign owned enterprises since tax advantages are granted only to foreign owned companies. Shares in international companies may not be held beneficially by a natural person who is a citizen or a resident of or domiciled in the Cook Islands; or by any company incorporated or registered under the Companies Act 1970-71. In addition, tax advantages are only granted to activities outside the Cook Islands since international insurance companies may only carry on business outside of the Cook Islands.

d. Assessment

| | 1a | 1b | 2a | 2b | 3 | 4 | 5 |
|---|----|----|----|----|---|---|---|
| The Cook Islands – International Insurance Companies | V | V | V | V | V | X | X |

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 the Cook Islands is 20%. Under Section 249 of the International Companies Act 1981-82 (as amended in 2005), companies incorporated under the Act (international companies) are exempt from taxation. Under Section 8 of the 2008 Insurance Act, there are three categories of licences. Category C licenses are only issued to a company incorporated under the International Companies Act 1981-1982. The license entitles the holder to carry on international business only. International business means insurance business that is not domestic business. 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 International Insurance Companies regime seems targeted to foreign owned enterprises since tax advantages are granted only to foreign owned companies. Category C licenses are only granted to a company incorporated under the International Companies Act. Shares in international companies may not be held beneficially by a natural person who is a citizen or a resident of or domiciled in the Cook Islands; or by any company incorporated or registered under the Companies Act 1970-71. In addition, category C licenses entitle the holder to carry on international business only. International business means insurance business that is not domestic business. We therefore propose a tick (“V” - harmful) for criterion 1a." [*de lege*]. Since the measure is not available to domestically owned companies or companies that carry on domestic business, we would also propose a tick (“V” - harmful) for criterion 1 b.

Criterion 2 – Ring-fencing:

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

The International Insurance Companies regime seems targeted to foreign owned enterprises since tax advantages are granted only to foreign owned companies and to companies that do not carry on domestic business. Since the income of non-domiciled or non-resident persons are not taxable in the

Cook Islands, the advantages are ring-fenced from the domestic market and thus, does not, affect the national tax base. By analogy to the assessment against criterion 1a/b we would propose a tick ("V" - harmful) for criterion 2a/2b).

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 measure does not include any express requirement for real economic activity or substantial economic presence. We would therefore propose a tick ("V" - harmful) for 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. We would therefore propose a cross (“X” – not harmful) for criterion 4.

Criterion 5 - Transparency:

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

The measure is fully set out and published in the relevant legislation and the practice should not involve any administrative discretion. We would therefore propose a cross (“X” – not harmful) for criterion 5.

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 should be considered overall harmful from a Code of Conduct point of view.

The main concerns which deviate from the Code of Conduct criteria relate to:

- The international business company regime seems **targeted at activities with foreign entities/markets** since tax advantages are granted only to foreign owned companies and to companies that do not carry on domestic business.
- The measure **does not include any express requirement for real economic activity or substantial economic presence.**