Council of the
European Union

Brussels, 9 March 2021
(OR. en)

6840/21

FISC 42

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Namibia's NA001 "Export Processing Zones (EPZ)" and NA002 "Exporters" regime – Final description and assessment

ROLLBACK REVIEW PROCESS

In 2020 Namibia adopted a law to amend the Income Tax Law in order to abolish the harmful regimes[1] and asked for a grandfathering period of 5 years.

The Code of Conduct Group meeting on 1 February 2021 acknowledged the rollback of the regime with the grandfathering period of 5 years. To demonstrate that the benefits of the two manufacturing regimes remain limited to companies and contracts that benefited from these regimes before the entry into force of the Income Tax Amendment Act, Namibia was asked to provide the Code of Conduct Group with a yearly report on the effects of grandfathering.

This conclusion was endorsed by the Council on 22 February 2021.

Annex 1: Assessment of the old NA001 and NA002 regimes in 2017 (standstill review)

---

[1] https://laws.parliament.na/cms_documents/7249-fdfc22a786.pdf

https://laws.parliament.na/gazettes/namibia-government-gazettes.php?id=1

Assessment of the old Namibia's "Export Processing Zones (EPZ)" (NA001) and "Exporters" regime (NA002) in 2017 (standstill)

SPECIAL TAX REGIMES: EXPORT PROCESSING ZONES (EPZ)

a. Description

Under the Export Processing Zones Act 1995, the Minister of Trade and Industry may, in consultation with the Minister of Finance, establish in any area, or declare any area to be, an export processing zone (EPZ). The objects of EPZs are to attract, promote or increase the manufacture of export goods, to create or increase industrial employment, to create or expand export earnings, to create or expand industrial investment and to encourage technology transfer and the development of management and labour skills in Namibia. Currently, an EPZ comprising 139,315 square metres has been established in the municipal area of Walvis Bay (i.e. the Walvis Bay Export Processing Zone).

b. Preferential features/ Benefits available under the EPZ regime

The following benefits are available to EPZ enterprises:

- exemption from value added tax;

- exemption from customs or excise duty in respect of goods imported into or manufactured in the EPZ;

- exemption from stamp duty on deeds relating to activities, property, etc. in the EPZ. This applies irrespective of whether the deed in question was executed inside or outside the zone;

- exemption from transfer duty in respect of the acquisition of immovable property located in the zone;

- exemption from income tax in respect of income derived in the zone; and

- exemption from the provisions of the Foreign Investment Act 1990 and the Labour Act 1992. However, in this case the Minister of Trade and Industry, in consultation with the Labour and Human Resources Development and the Offshore Development Company, may make regulations relating, inter alia, to basic conditions of employment, health, welfare and safety.

BACKGROUND

The Government of the Republic of Namibia adopted a policy for the establishment of an Export Processing Zone (EPZ) regime to serve as a tax haven for export-oriented manufacturing enterprises in the country, in exchange for technology transfer, capital inflow, skills development and job creation. This policy decision was translated into law through the passage in Parliament of the Export Processing Zone Act (Act No. 9 of 1995). The implementation of this initiative started in 1996.

As a policy instrument, the EPZ regime is designed to:

• Facilitate imports of foreign productive capital and technology as well as the transfer of technical and industrial skills to the local workforce;

• Contribute towards an increased share contribution of the manufacturing (industrial) sector to job creation, the country's gross domestic product (GDP) and exports of manufactured goods; and

• Enhance the diversification of the local economy.

Namibia's EPZ regime offers export-oriented manufacturers a range of internationally competitive advantages.

Tax-free regime

EPZ enterprises are exempted from corporate income tax, duties and value-added tax (VAT) on machinery, equipment and raw materials imported into Namibia for manufacturing purposes. The only taxes payable are personal income tax on employees' income as well as the 10% withholding tax (non-resident shareholders) on declared dividends. In addition, EPZ enterprises are allowed to hold foreign currency accounts at commercial banks as well as to repatriate their capital and profits.

No time-bound incentives

The incentives referred to above are for an indefinite period or apply for the life time of the approved project in Namibia.

Equal treatment of investors

Local and foreign investors who meet the conditions for admission under the EPZ enjoy equal treatment and eligibility to the applicable EPZ incentives.

Freedom of location

EPZ enterprises are free to establish themselves anywhere in the country. An EPZ enterprise can set up as a single factory enterprise at any clearly demarcated location of choice. Where an industrial zone or park has been developed, interested investors may choose to locate in such industrial zone or park to take advantage of the affordable factory shells or warehouses that have been constructed and are on lease by the ODC or the Walvis Bay EPZ Management Company if the harbour town of Walvis Bay is the preferred location.

Business and Industrial infrastructure

The ODC develops and leases serviced industrial and business sites and factory shells. Four multi-purpose industrial parks have been developed at various locations in the country. A Park has been developed at Oshikango, Helao-Nafidi Town near the Angola-Namibia northern borders purposely to support and boost cross-border trade with neighbouring Angola. The other industrial and business Parks are in Windhoek, the capital city; Ondangwa in the northern part of the country; and Katima Mulilo near the north-eastern borders with Zambia, Zimbabwe and Botswana. A new industrial park development is underway at the border settlement of Katwitwi in the Kavango Region on the Angola-Namibia border.

http://www.namibiahc.org.uk/epz.php and IBFD

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

An EPZ enterprise must export all or at least 70% of its products outside the SACU market (Namibia, Botswana, Lesotho, Swaziland and South Africa). However after having been in operation for at least a year, an EPZ enterprise may apply to the Minister responsible for the EPZ for special consideration and permission to sell up to a maximum of 30% of its previous year's production output in the domestic (SACU) market.

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 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, i.e. only on export income and minimum requirements regarding such export activity are imposed.

Sources of information

http://www.namibiaembassy.be/pdf/EPZ.pdf

d. Assessment by experts

	1a	1b	2a	2b	3	4	5
I. Namibia – export processing zones (EPZ)	X	V	X	V	X	X	X

Gateway criterion - Significantly lower level of taxation:

The general tax rate for domestic companies is 32%. Export Processing Zone are established under the Export Processing Zones Act of 1995. Special corporate tax rate or concessions apply to manufacturing companies, exporters, export processing zone enterprises, mining companies and petroleum companies. Companies operating in the EPZs are exempt from income tax in respect of income derived in the zone. Apart from that those companies are exempt from VAT, customs and excise duties , stamp duty on deeds, transfer duty, if relates to EPZ activity. The only taxes payable are personal income tax on employees' income and the 10% withholding tax (non-resident shareholders) on declared dividends. The incentives are for an indefinite period or apply for the life time of the approved project in Namibia.

The measure provides for a significantly lower level of taxation. It is therefore potentially harmful within the meaning of paragraph A of the Code.

Criterion 1 – Targeting non-residents:

Criterion 1 contains two elements. The first element is whether the measure is exclusively available to non-residents or in respect of transactions carried out with non-residents (criterion 1a). The second element is whether it is only or mainly used by non-residents or for transactions with non-residents (criterion 1b).

1a) Criterion 1a concerns the de jure application of the measure.

Both local and foreign investors who meet the conditions for admission under the EPZ Act may benefit from the regime.

Therefore, we would propose a cross ("X") for this criterion.

1b) Criterion 1b is used to complement the assessment under criterion 1a which only looks at the literal interpretation of the measure. It takes account of the de facto effect of the measure. Where the majority of taxpayers (or counterparties to transactions) benefitting from the measure are in fact non-residents the measure will fall foul of criterion 1b.

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, i.e. only on export income and minimum requirements regarding such export activity are imposed.

We would therefore propose a tick ("V" - harmful) for criterion 1b.

Criterion 2 – Ring-fencing:

Goods manufactured in an EPZ may not be removed from the zone, except for removal to another zone or for export from Namibia. However, the sale within the Southern African Customs Union of up to 30% of the production may be allowed upon request.

No retail trade in goods manufactured in or imported into an EPZ is allowed. Neither may goods manufactured in the zone be used for consumption in that zone or another zone.

Moreover, by analogy to the assessment against criterion 1,

we would propose a cross (“X”) for criterion 2a and a tick ("V" - harmful) for criterion 2b.

Criterion 3 - Substance:

The preferential regime benefits only an EPZ enterprise who obtained a certificate to do so. No such certificate will be issued to an enterprise which does not intend to conduct the business of manufacturing in the EPZ.

We would therefore propose a cross ("X") for criterion 3

Criterion 4 – Internationally accepted principles:

The measure (notably the exemption from taxes) does not as such violate any internationally accepted principle. Namibia has transfer pricing legislation in place aimed at enforcing the arm’s length principle in cross-border transactions carried out between connected persons.

We would therefore propose a cross ("X") for criterion 4.

Criterion 5 - Transparency

An EPZ enterprise may only operate as such if it has been issued a certificate to do so. The Certificate sets out the terms and conditions under which such applicants or investors have been admitted to do business and operate as EPZ enterprises in Namibia. The applicant/investor undergoes multi-tire screening process. Projects that meet the qualifying conditions for admission under the EPZ are referred to the EPZ Committee for final consideration and approval. The Committee consists of the Minister of Trade and Industry, as the Chair, the Minister of Finance and the Governor of the Bank of Namibia, assisted by the ODC and officials drawn from other relevant Ministries and agencies. IT is not however clear on which grounds applications can be refused.

We would therefore propose a cross ("X" – not harmful) for criterion 5.

Overall assessment

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.

OTHER TAX AND INVESTMENT INCENTIVES: EXPORTERS REGIME

a. Description

All companies exporting goods manufactured in Namibia, other than fish or meat products, are entitled to a deduction of 80% of their taxable income derived from such exports. This concession also applies to the re-export or trans-shipment of goods manufactured abroad.

The standard income tax rate for domestic companies is currently 32%.

Special corporate tax rates or concessions apply to: manufacturing companies; exporters; export processing zone enterprises; mining companies and petroleum companies. Companies operating in Namibia engaged in export activities benefit of 80% tax deduction of their taxable base, the effective corporate rate applied being therefore 6.4%. Thus, a preferential tax treatment is granted to Exporters.

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

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 Exporters' 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, i.e. only on export income and minimum requirements regarding such export activity are imposed.

Sources of information

IBFD

d. Assessment by experts

	1a	1b	2a	2b	3	4	5
II. Namibia – exporters regime (ER)	X	V	X	V	?	X	X

Gateway criterion - Significantly lower level of taxation:

The general tax rate for domestic companies is 32%. Special corporate tax rates or concessions apply to exporters. Companies operating in Namibia engaged in export activities benefit of 80% tax deduction of their taxable base, the effective corporate rate applied being therefore 6.4%. Thus, a preferential tax treatment is granted to Exporters.

The measure provides for a significantly lower level of taxation. It is therefore potentially harmful within the meaning of paragraph A of the Code.

Criterion 1 – Targeting non-residents:

Criterion 1 contains two elements. The first element is whether the measure is exclusively available to non-residents or in respect of transactions carried out with non-residents (criterion 1a). The second element is whether it is only or mainly used by non-residents or

1a) Criterion 1a concerns the de jure application of the measure.

The Foreign Investment Act guarantees equal treatment for foreign investors and Namibian firms.

Therefore, we would propose a cross ("X") for this criterion.

1b) Criterion 1b is used to complement the assessment under criterion 1a which only looks at the literal interpretation of the measure. It takes account of the de facto effect of the measure. Where the majority of taxpayers (or counterparties to transactions) benefitting from the measure are in fact non-residents the measure will fall foul of criterion 1b.

The Exporters' regime seems targeted at 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, i.e. only on export income and minimum requirements regarding such export activity are imposed.

We would therefore propose a tick ("V" - harmful) for criterion 1b.

Criterion 2 – Ring-fencing:

by analogy to the assessment against criterion 1,

we would propose a cross (“X”) for criterion 2a and a tick ("V" - harmful) for criterion 2b.

Criterion 3 - Substance:

Exporters’ regime seems to require real economic activity however there is no information available on existence of substantial economic presence.

We would therefore propose "?" for criterion 3

Criterion 4 – Internationally accepted principles:

The measure (notably the exemption from taxes) does not as such violate any internationally accepted principle. Namibia has transfer pricing legislation in place aimed at enforcing the arm’s length principle in cross-border transactions carried out between connected persons.

We would therefore propose a cross ("X") for criterion 4.

Criterion 5 - Transparency

All companies exporting goods manufactured in Namibia, are entitled to benefits under the regime.

We would therefore propose a cross ("X" – not harmful) for criterion 5.

Overall assessment

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.

3. Assessment of criterion 2.2

N/A

4. Outcome of bilateral contacts:

- Namibia has replied to the initial letter and a meeting has been held in Brussels with the Namibian Ambassador. Namibia has not replied to the questionnaire.
- No commitments have been made.

5. Possible draft recommendations

- Namibia should join the Global Forum on Transparency and Exchange of Information for Tax Purposes in the near future.

- Namibia should commit to and start the legislative process to implement effectively the CRS, either by signing the Multilateral Competent Authority Agreement (MCAA) or through bilateral agreements.

- Namibia should sign and ratify the Convention on Mutual Administrative Assistance (MAC) in Tax Matters.

- The identified regimes need to be amended on the points indicated by the experts or abolished in order for Namibia to comply with criterion 2.1.

- Namibia should join the inclusive framework on BEPS or commit to BEPS minimum standards in the near future.