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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group
Subject: Belize's International Business Company regime (BZ001)
– Final description and assessment

ROLLBACK REVIEW PROCESS (OCTOBER 2019)

In January 2019, the EU Code of Conduct Group on business taxation (COCG) agreed that Belize had fulfilled its commitment under criterion 2.1 for the EPZ regime (BZ002). However, concerning the IBC regime (BZ001), the COCG considered that Belize did not introduce sufficient substance for the following reasons:

- (i) Belize introduced an obligation to have physical presence in Belize only for activities that needed a license to be carried out;
- (ii) Non-licensed activities could opt to have a physical presence in Belize but were not systematically required to have substance in Belize; and
- (iii) In both cases, the condition of substance (either mandatory or under option) could be fulfilled merely with a managing agent in Belize.

On this basis, the COCG considered that Belize did not address its commitment under criterion 2.1 and Belize was placed on the EU list of non cooperative jurisdictions by the ECOFIN Council in March 2019.

In the following months, Belize adopted various amendments to several Acts, in order to address EU Member States' concerns. In July, Belize considered that with these various amendments and applicable legislation, its IBC legislative framework had become too complex. It therefore decided to work on an overall reform. It discussed the content of this reform at technical level with the Commission services on numerous occasions. A final package of four legislative acts was adopted by Belize and gazetted on 11 and 12 October 2019:

- (i) Economic Substance Act, 2019; Act No. 15 of 2019: <https://www.ifsc.gov.bz/wp-content/uploads/2019/11/Economic-Substance-Act.pdf>;
- (ii) International Financial Services Commission (Amendment) (No.2) Act, 2019; Act No. 16 of 2019: <https://www.ifsc.gov.bz/wp-content/uploads/2019/11/IFSC.pdf>;
- (iii) International Business Companies (Amendment) (No.2) Act, 2019; Act No. 17 of 2019: <https://www.ifsc.gov.bz/wp-content/uploads/2019/11/International-Business-Companies.pdf>.
- (iv) Stamp Duties (Amendment) Act, 2019; Act No. 18 of 2019.

The COCG meeting of 24 October 2019 subsequently approved the rollback of the old IBC regime (BZ001). This conclusion was endorsed by the ECOFIN Council on 8 November 2019.

Below is the final COCG assessment of the IBC regime as amended:

	1a	1b	2a	2b	3	4	5
Belize – new IBC regime	X	?	X	?	X	X	X

V = harmful

X = not harmful

Explanation

Gateway criterion - Significantly lower level of taxation:

The general income tax rate in Belize is 25%.

The income tax payable is reduced by the amount of business tax payable at the rate of 3% of all gross contract payments in excess of BZD 3,000.

IBCs are taxed at a special rate of 3% up to 3,000,000 BZD and at the rate of 1.75% above 3,000,000 BZD.

IBCs are also exempt from CIT and business tax on their foreign sourced income. This issue is dealt with separately, as part of Belize's commitment of February 2019 to amend or abolish the harmful features of this measure by the end of 2019.

The measure therefore provides for a significantly lower level of taxation and is potentially harmful under the Code.

Criterion 1 & 2

Section 5 of the IBC Act was already amended in 2018¹ to remove the ring-fencing provision that prohibited an IBC to carry out business with persons resident in Belize.

The new Section 5 of the IBC Act allows IBCs to conduct any activity that is not prohibited under a law in Belize. The regime is open to all entities, regardless of whether they are foreign or domestic and regardless of whether their income is foreign or domestic.

There is no data available to assess a potential *de facto* ring fencing.

Criterion 3

a) IP part of the IBC regime

On the IP part of the regime, the new draft IBC legislation maintains the general prohibition to acquire, hold, own or deal with any intellectual property asset (Section 3,4 of the draft IBC Amendment Act), together with the agreed grandfathering up to 30 June 2021.

Considering this general prohibition of any IP activities, there is still no need to consider further the application of the nexus approach to the IBC regime.

b) Non-IP part of the IBC regime

On the non-IP part of the regime, Member States had agreed in January 2019 that Belize did not introduce sufficient substance because:

- (i) Non-licensed activities could be carried out without physical presence in Belize unless they opted to have physical presence in Belize;
- (ii) Licensed (as well as non-licensed activities for which the IBC opted for physical presence in Belize) could fulfil substance requirements merely by having a managing agent in Belize.

¹ IBC (Amendment) Act, 2018

Under the new IBC Act, every IBC is required to meet substantial economic presence in line with the Economic Substance Act, 2019 (the "ES Act", 2019).

The ES Act does not distinguish between licensed and non-licensed activities, as both have to maintain economic substance in Belize. There is no longer an option to have substance in Belize for non-licensed activities. All IBCs will have to file an annual report on their activities and on their substance in Belize used to carry out their activities.

As an exception, IBCs that can provide sufficient and objective evidence that they are tax resident in another jurisdiction will not be required to file such a report on their substance. They will however have to file information evidencing their tax residence in another jurisdiction with a letter or a certificate:

- from or issued by the tax authority of their jurisdiction of residence stating that they are considered to be resident for tax purposes in that jurisdiction;
- showing clear and specific period of validity; and
- showing an assessment to tax, a confirmation of self-assessment to tax, a tax demand, evidence of payment of tax, or any other equivalent document issued by the tax authority for the jurisdiction in question.

If the entities concerned cannot provide such evidence, they will be considered as being in the scope of substance requirements and subject to sanctions if they do not have adequate substance in Belize to carry out their activities.

In order to have sufficient substance, IBCs will need to demonstrate that they have an adequate number of full-time employees in Belize, an adequate amount of annual operating expenditure and adequate physical offices to carry out their activities.

In case of outsourcing, the ES Act provides for the following safeguards:

- An IBC shall not outsource core income generating activities outside of Belize;
- The included entity should be able to demonstrate adequate supervision and control of the managing agent in respect of outsourced activities;
- The resources of the managing agent conducting outsourced activities in Belize on behalf of the entity shall not be counted multiple times in respect of multiple companies;
- The managing agent shall report to the competent authority annually.

In any case, all IBCs should be directed and managed in Belize with an adequate number of board meetings conducted in Belize, given the level of decision making required. A quorum of the board must be present in Belize to take the strategic decisions of the company, which must be recorded in the minutes kept in Belize.

The International Financial Services Commission will be in charge of the enforcement of this legislation through the IFSC (Amendment) Act, 2019.

Finally, as confirmed by Belize, the requirements for substance are deemed to have come into force on 1 January 2019 (Section 1(1) of the Economic Substance Act, 2019).

The new IBC (Amendment) Act, 2019 together with the ES Act, 2019 therefore address all the concerns raised on the lack of sufficient substance requirements in the previous IBC reform.

Criterion 4

The provisions of new legislative package applicable to the IBC regime do not contain elements that would be relevant from the point of view of internationally accepted principles as referred to in criterion 4 of paragraph B of the Code.

Criterion 5

All preconditions necessary to grant a tax benefit are clearly laid down in publicly available laws, decrees, regulations etc. before a measure can be considered transparent.

Overall assessment:

In the light of the assessment above, the new IBC regime is considered as not harmful.

Annex 1: Assessment of the old BZ001 regime in 2017 (standstill review)

Annex 1: assessment of the old BZ001 regime in 2017 (standstill)

a. Description

A Belize International Business Company (IBC) is a limited liability company incorporated under the International Business Companies Act (IBCA). Because of its inherent offshore fiscal status, an IBC cannot carry on business with persons resident in Belize, hold an interest in real property situated in Belize other than a lease, hold shares in locally incorporated companies or carry on banking business or business as an insurance or a reinsurance company. IBCs are exempt from income tax and business tax on dividends, interest, rent, royalties and other distributions and similar amounts paid to non-residents.

b. Preferential features/ Benefits available under the IBC Status

Standard income tax rate in Belize is of 25% on the chargeable income. However, the income tax payable is reduced by the amount of business tax payable and if the income tax assessed exceeds the business tax liability, the difference is written off and there is no additional liability.

International Business Companies are exempt from income tax. Also, IBCs are exempt from business tax on dividends, interest, rent, royalties and other distributions and similar amounts paid to non-residents.

Therefore, a preferential tax treatment is granted to IBCs.

c. 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.

An IBC cannot carry on business with persons resident in Belize, hold an interest in real property situated in Belize other than a lease, hold shares in locally incorporated companies or carry on banking business or business as an insurance or a reinsurance company.

Sources of information:

IBFD; <http://www.belizeoffshoreinvestors.com/off1.html>

d. Assessment by the FHTP

In the process of being amended

