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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: The EU list of non-cooperative jurisdictions for tax purposes
– Commitment letters by some jurisdictions regarding the replacement of harmful preferential tax regimes with measures of similar effect
= Seychelles



**The Minister
Ministry of Finance, Trade, Investment and Economic Planning**

Republic of Seychelles
Liberty House, Victoria, Mahé

15th February, 2019

Ms Fabrizia Lapecorella
General Secretariat
Council of the European Union
Chair of the Code of Conduct Group (Business Taxation)
Rue de la Loi 175 – 1048 Brussels, Belgium

Dear Ms Lapecorella

**SUBJECT: REPLACEMENT OF SEYCHELLES' HARMFUL PREFERENTIAL TAX
REGIMES WITH MEASURES OF SIMILAR EFFECT**

We refer to your letter dated 1 February 2019 and to subsequent clarification communications including the explanatory email of 8th and 14th of February 2019 from Mr [REDACTED].

We are very concerned at the European Union's (EU) assessment on the Seychelles' territorial tax system. We respectfully disagree with the EU's assessment that Seychelles' longstanding territorial tax system is harmful. We therefore ask the EU to kindly reconsider this matter having regard to the following:

1. The assessment in the Annex to your letter, headed 'Seychelles' exemptions of foreign income regime (SC011)' (the **Assessment**), which sets out the EU's assessments and explanations, mistakenly asserts that Seychelles has just "introduced" a territorial tax system. Seychelles has had a territorial tax system in place for more than fifty years, a system which taxes Seychelles residents on their Seychelles sourced income but not on their foreign sourced income. Seychelles resident includes all resident individuals, companies (**ordinary companies**) registered under the Companies Act 1972 and all companies (**IBCs**) incorporated under the International Business Companies Act 2016 (the **IBC Act**).

2. The recent amendments to the Business Tax Act 2009 (**BTA**) did not “introduce” the longstanding concept of Seychelles only taxing residents (and non-residents) on Seychelles sourced income, it merely clarified the existing law, addressed uncertainties and formally provided for established practices. With regard to Mr ██████’s email, while the definition of “assessable income” has varied slightly over the years, the substance and gist of it has always been that Seychelles taxes all residents (and non-residents) on Seychelles sourced income but not on foreign sourced income.
3. Before the enactment of the Business Tax (Amendment) Act 2018 (the **BTA Amendment Act**), effective 1 January 2019, section 5(1) of the BTA provided that an amount derived by a resident person in carrying on a business is derived from sources in Seychelles except to the extent that it is attributable to a business carried on through a permanent establishment of the person outside Seychelles, i.e. a resident’s foreign income was and is not taxable in Seychelles, to the extent that the income was not attributable to a PE outside Seychelles. The amendments by the BTA Amendment Act to section 5 of the BTA clarified and better defined Seychelles sourced income. Going further back, section 21 of the Business Tax Act 1987 (replaced by the BTA) also confined assessable income to income derived from a source in Seychelles.
4. The Assessment (first page) mistakenly asserts: (i) “*In the case of the Business Tax Act, no tax is levied, compared to the general rate of 25 or 33%.*”; and (ii) “*that the exemption is applied exclusively to transactions carried out with non-resident...*”. Comments:
 - (a) The general business tax rate of 25 or 33% is set by the BTA. The BTA is the principal law governing taxation in Seychelles. Also see the Income and Non-Monetary Benefits Tax for personal tax rates on Seychelles sourced income.
 - (b) The general business tax rate of 25 or 33% applies to all: (i) residents, including individuals, ordinary companies and, since 1 January 2019, all IBCs, and (ii) non-residents, on their assessable income as defined in the BTA, namely, income sourced in Seychelles.
 - (c) Under the BTA, assessable income does not include foreign sourced income; this applies uniformly to all residents, individuals, ordinary companies and IBCs. IBCs may be owned or operated by residents or non-residents. No fiscal favouritism is given to non-residents over residents.
5. The Assessment repeatedly indicates that Seychelles has introduced an ‘*exemption*’ on foreign income. That contention is without basis. Comments:
 - (a) As a sovereign state Seychelles has chosen for many years for operate a tax system under which residents are taxed in Seychelles on Seychelles sourced income but not on foreign sourced income. Avoiding double taxation, Seychelles leaves taxing of Seychelles residents working or dealing with assets outside Seychelles to the tax laws and authorities where such work is done or assets are situated.
 - (b) Foreign income is not exempt income, it is income not captured by Seychelles’ territorial tax system. As assessable income under the BTA and its predecessor legislation has never included foreign sourced income, contrary to the Assessment findings there is no question of Seychelles introducing or making an *exemption*.

- (c) An exemption from liability to pay tax on foreign income, by definition, can only apply if income was liable for tax on worldwide income and a tax break was given. As Seychelles assessable income does not include foreign sourced income, no exemption is being given. Exemptions can only apply in respect of assessable income. “Exempt income” is provided for under section 12 and the Second Schedule of the BTA, the latter listing organizations, including charities, state bodies, etc, which are exempt from business tax on all or part of their assessable income.
 - (d) As to Mr [REDACTED]’s comments regarding the definition “non-taxable business income”, we reiterate that Seychelles is not introducing anything new or an exemption; the definition simply gives a name for income that is foreign sourced income and not assessable income. Contrary to Mr [REDACTED]’s assertion, the defined term is used in section 5(4) and section 16(6)(c) of the BTA as amended by the BTA Amendment Act. The EU’s repeated use of the word “exemption” in the Assessment is regrettable and inaccurate. An exemption applies to assessable income. Foreign income is not included in the definition of assessable income.
 - (e) Referring further Mr [REDACTED]’s comments, Seychelles has not introduced exemptions; only provisions to make abundantly clear what is not taxable as it is foreign sourced income, which is not assessable income (see new sections 5(4) and 8(4) of the BTA).
 - (f) No new or additional tax advantage has been introduced by the BTA Amendment Act or the IBC Amendment Act; there has only been clarification of the pre-existing position of no tax on foreign sourced income.
6. We comment more specifically on Mr [REDACTED]’s email in paragraph 11 below, but he asserts that reading the recent amendments to the BTA, “it appears that the *income exempted from taxation is only the income generated by transaction with non-residents.*” Comments:
- (a) This assertion is incorrect and misleading. As already noted, there is no exemption from taxation. Seychelles’s definition of assessable income (for taxation purposes) means Seychelles sourced income only.
 - (b) It is incorrect to state or imply that the tax benefits afforded by Seychelles not taxing foreign income are only enjoyed by non-residents. All residents and non-residents alike equally enjoy the fact that Seychelles does not tax on foreign sourced income. If, for example, a Seychelles resident individual or company owns real estate in the UK, the Seychelles resident would be liable for British tax on any income or profits it derives from the UK property and (in view of Seychelles’ territorial tax system) would not be liable for Seychelles tax on its UK sourced income. If a non-resident does business with Seychelles and earns Seychelles sourced income, then it is liable for tax on its Seychelles sourced income. If a Seychelles resident provides business services in or from Seychelles to non-residents, the resident will be liable to tax on such Seychelles sourced income earned from non-residents.
 - (c) Seychelles taxes based on the source of income; whether it is derived by a resident or non-resident makes no difference; for all, Seychelles sourced income is taxable in Seychelles; for all, foreign sourced income is not taxed in Seychelles.

7. The substance requirement (i.e. minimum domestic expenditure, minimum employment and others), applies only if the jurisdiction is providing a preferential tax rate to the income being derived. As such, since we feel we do not have a preferential tax regime for businesses, the substance requirement is not applicable.
8. The Assessment does not acknowledge the significant steps taken by Seychelles in the recent amendments to the IBC Act. Comments:
 - (a) Since 1994 IBCs have been exempt from Seychelles tax on income and profits but prohibited from carrying on business in Seychelles. There was never any favouring of non-residents over residents, because residents too are not liable to Seychelles tax on their foreign sourced income, i.e. our territorial tax system. IBCs can be owned or used by residents or non-residents.
 - (b) More recently, OCED deemed the IBC regime to be harmful because it was not open to domestic transactions/business. To address this, by the IBC Act amendments Seychelles has removed the prohibition against IBCs carrying on business in Seychelles. If an IBC earns assessable income (income sourced from Seychelles) it is required to notify the Registrar, file a return and annual audited accounts with the Registrar, file a tax return with the Seychelles Revenue Commission and where applicable pay Seychelles tax on its assessable income. The IBC Amendment Act also repealed the blanket tax exemption for IBC income and profits; an IBC is now a tax resident entity and as with every other resident is not liable for Seychelles tax on foreign sourced income.
9. While mostly covered above, we refer again to some of the specific provisions mentioned in Mr [REDACTED]'s email and comment:
 - (a) Regarding the definition "non-taxable business income": see paragraph 5(e).
 - (b) It is false and misleading to assert that section 5(3) of the BTA "*segregates the income generated from transactions with non-residents from those generated with resident for fiscal purposes.*" Income is not segregated based on whether was earned from or by residents or non-residents; income (for tax liability purposes) is divided into Seychelles sourced income, which is taxable (whether derived by from or by a resident or non-resident), and foreign sourced income (whether derived by or from a resident or non-resident) is not taxable.
 - (c) The amendment to section 8(4) did not change the pre-existing position; it restated the existing position more clearly; once again, there is no exemption as foreign sourced income is not assessable income.
 - (d) It is incorrect to assert that "*section 8 [of the BTA] excludes from taxation the income derived by a PE of a non-resident.*" Section 8(2)(b) makes clear that in such a case (Seychelles sourced income derived by a PE of a non-resident), income is taxable under section 6 (namely, per section 6(1) business tax at the rates declared in the First Schedule of the BTA, i.e. usually 25 or 33%). For instance, a foreign bank having its head office situated in Mauritius and a branch located in Seychelles i.e. having a PE in Seychelles, will be taxed under section 5(2) of the BTA on all income derived from sources in Seychelles.

- (e) Mr [REDACTED]'s point raised about section 11 of the BTA ("*However, under par. 2 it is specified that the assessable income does not include the exempt income and income subject to withholding taxes.*") is unclear but subsections 11(1) and (2) are not contradictory and do not overlap. Comments:
- (i) Section 11(1) of the BTA, which is expressed to be subject to subsection (2), captures and defines all assessable income derived from sources in Seychelles. Foreign income is not assessable income.
 - (ii) Exempt income is income that, but for the exemption, would be assessable income in Seychelles, and is not "non-taxable business income", namely, foreign sourced income. Section 11(2) of the BTA provides that exempt income is not included in assessable income. See the section 2 definition of "exempt income" read in conjunction with section 12 and the Second Schedule, including, for example, income from charities, state bodies, etc.
- (f) There is no legal or factual basis for the assertion that Seychelles' territorial tax system and the amendments made to the BTA by the BTA Amendment Act are harmful to the EU.


The Government of Seychelles remains committed to ensure our tax legislations are based on international best practices. Thus, we feel there have been certain confusion in regards to the interpretation of our current tax legislations.

However, despite the above discussions, we remain committed to work with the EU to understand their concerns and ensure that Seychelles will amend or abolish any proven harmful regimes by the 31st December 2019, without any grandfathering mechanism, which at the moment we are of the opinion that our regimes are not harmful.

Rest assured of the assurances of my highest consideration.

We remain at our entire disposal should you need any further clarifications.

Yours sincerely


AMBASSADOR MAURICE J. L. LOUSTAU-LALANNE
MINISTER