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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Belize's Foreign Source Income Exemption regime (BZ006)
– Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2020)

On 23 December 2019 Belize adopted amendments to the Income and Business Tax Act (see doc. 7417/20 ADD 1). The amendments entered into force on 1 January 2020.

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

	1a	1b	2a	2b	3	4	5
Belize – Foreign Source Income Exemption	n/a	n/a	n/a	n/a	n/a	n/a	n/a

V = harmful

X = not harmful

n/a= not applicable

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

Annex 1: Assessment of the BZ006 regime in 2019 (standstill review)

ADD 1: Income and Business Tax (Amendment) Act 2019

Explanation

In January 2019, Belize decided to review its general tax system and introduce an exemption for income derived from foreign sources. This exemption replicated the harmful effects of the regime that Belize previously had to amend (the IBC regime). Belize's FSIE regime was therefore considered to be harmful (see Annex 1), and Belize was asked to commit to amend it by the end of 2019.

The amended legislation has been passed by the Parliament and gazetted. It entered into effect from 1 January 2020. The adopted amendments aim in particular at removing the harmful features of the FSIE under the Income and Business Tax Act (IBTA).

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 corporate income tax rate in Belize is 25%. Before the recent amendment to the IBTA, only income accruing in or derived from Belize was subject to income tax, while foreign source income was totally exempted. With the amendment of the IBC regime, IBCs also started to benefit from this general tax treatment – leading to a surge in the number of companies that were given a total exemption.

Belize has maintained a dual system of a business tax on gross sales or turnover (BT) and a corporate income tax system (CIT). This covers IBC and Cap 250 companies (domestic companies).

However, under the amended legislation, only companies in the petroleum sector are now required to pay CIT. All other companies in Belize will only be subject to a business tax on turnover, at different rates depending on the income. In this context, interests, dividends and royalties will be subject to a 5% tax on turnover (i.e. gross income). Foreign sourced active business income that is not attributable to a permanent establishment in the source state will be taxable in Belize, at the rate applicable to the company's operations.¹ Belize will provide a tax credit for foreign taxes paid.

In order to prevent double taxation, Belize will allow companies to offset any taxes that they have paid on passive income abroad. A tax credit will only be granted, however, up to the amount of business tax that should be paid in Belize.

Companies can be exempted from the business tax on passive income, if they can demonstrate that they are tax resident in another jurisdiction. However, 1) this cannot be a jurisdiction featuring in the Annex 1 of the EU list for tax purposes and 2) the company shall not have a PE in Belize. Belize has brought its PE definition into line with the international standards (See new Section 108A).

To avoid the abuse of this provision, Belize will spontaneously exchange information with the authorities of the jurisdiction of claimed tax residence, including the name of the beneficial owner(s) of the company. If a non-resident company cannot provide sufficient evidence of its tax residency abroad, it will be subject to tax in Belize, including on its passive income.

No grandfathering has been foreseen for the regime in line with the COCG's request for replacement regimes.

¹ Domestically, a monthly turnover tax is charged on industry, business activity and/or income type at any one of fifteen specific rates ranging from 0.75 - 19.0 percent with a historical weighted average of three percent. Belize informed that the policy of differing rates was determined by trying to balance the perceived heterogeneity of firms within each category in terms of marginal costs of production, the importance of revenues for the government and welfare maximization.

Overall assessment

Belize's FSIE regime is no longer harmful. The amended legislation does not provide for a significantly lower level of taxation for certain kind of companies or activities, and therefore does not pass the gateway criterion of the COCG.

Assessment of the BZ006 regime (standstill) in 2019**Belize's exemption of foreign income regime (BZ006)****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 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 and companies operating in a DPA 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.

Under Section 4 and 7 of the Income and Business Tax Act, income derived by IBCs outside of Belize is exempt from income and business tax.

Under Section 4 of the Income and Business Tax Act, income derived outside of Belize by companies operating in a DPA is exempt from income tax. Companies operating in DPAs are exempt from business tax.

Therefore, the measure provides for a significant lower level of taxation and is potentially harmful under the Code.

	1a	1b	2a	2b	3	4	5
Belize – Exemption of foreign income	V	?	V	?	V	X	X

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”

Criterion 1a: The exemption from taxation of foreign source income is only applied in respect of transactions carried out with non-residents and it does not affect the national tax base. The measures are therefore ring-fenced.

Criterion 1b: There is a high risk that the new provision will have a de-facto ring-fencing effect, considering that the new provisions are likely to apply to those who benefited from the regime that Belize has amended, which were declared ring-fenced.

Belize was unable to provide information on the type of activities (offshore and/or onshore) in which Belize IBCs were engaged. Belize also did not provide information the proportion of domestic owned/foreign owned entities (including IBC and companies operating in DPAs) as well as their average income.

More information should be gathered from Belize to be able to conclude on this point.

Criterion 2 – Ring-fencing:

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

As the exemption on taxation applies only to transactions with non-residents, the national tax based is not affected. What has been written above under criterion 1a and 1b also applies to criterion 2a and 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”

According to the standard practice for the evaluation of a measure against criterion 3, a measure is found harmful under this criterion if there are no specific requirements with regard to real economic activities and notably any requirement with respect to employment obligations.

The Income and Business Tax Act does not impose substance requirements for companies benefitting from the tax exemption. Some pieces of legislation may impose specific substance requirements for some type of companies, e.g. IBCs and DPAs. However, as mentioned above, the requirements concerning IBCs are of a limited nature. Moreover, the tax exemption on foreign source income under the Income and Business Tax Act covers a much broader range of entities and income.

It should also be noted that the exemption of foreign source income in Belize is broadly similar to participation exemption regimes in other jurisdictions. Regimes such as these should be properly contained by appropriate anti-abuse measures, in order to tackle tax-planning opportunities.

Paragraph L of the Code of Conduct states that anti-abuse provisions or countermeasures contained in tax laws and in double taxation conventions play a fundamental role in counteracting tax avoidance and evasion. In past assessments, the Code Group has taken into account, in the overall assessment of various regimes, the existence of appropriate anti-abuse rules. Such measures would include CFC rules or a switchover clause, in line with the agreed Code Guidance and previous assessments. The Income and Business Tax Act does not contain any of these measures.

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 measures 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 - 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.

Overall assessment:

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