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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Antigua and Barbuda's International Business Corporations regime (AG001)
– Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

Antigua and Barbuda introduced legislation deleting the corporate tax exemption within the regime with immediate effect from the date of publication without providing grandfathering. The exemption is removed by deleting articles 270-281 of the IBC Act. IBCs would now be taxed at the general tax rate of 25%. No grandfathering is provided.

Act No. 26 of 2018, “Law (Miscellaneous Amendment) Act, 2018”: see [annex 2](#)

Official gazette:

<http://gazette.laws.gov.ag/wp-content/uploads/2018/12/No.-92-Official-Gazette-20th-December-2018-Editors-Final-Draft.pdf>

The Code of Conduct Group meeting of 30 January 2019 approved the rollback of the regime. This conclusion was endorsed by the ECOFIN Council on 12 March 2019.

Annex 1: Assessment of the old AG001 regime in 2017 (standstill review)

Annex 2: Amendment of the International Business Corporations Act

Assessment of the old AG001 regime in 2017 (standstill)

a. Description

An International Business Corporation (IBC) is incorporated under the International Business Corporations Act of 1982. An IBC is not permitted to carry on any business activity within Antigua and Barbuda except for those activities, which are solely in furtherance of its international trade or business activities.

An IBC is considered resident in Antigua if it is:

- incorporated in Antigua and the majority of the shares are beneficially held by one or more resident individuals;
- incorporated outside Antigua but controlled directly or indirectly by resident individuals and/or a resident company; or
- controlled by a resident company. “Controlled” means that shares carrying sufficient voting power to elect the majority of directors are held directly or indirectly.

Often used “international” activities of an IBC cover, for example: banking; trust business; insurance; manufacturing; insurance broking; commercial, industrial, trading or business services; and international shipping and aircraft.

Sources: [*IBFD, Antigua Offshore Companies, International Business Companies Act*](#)

b. Benefits available to the IBC:

Preferential: Yes, exempt from CIT. The normal CIT rate is 25%.

The IBC are taxed lower than the standard 25% corporate income tax rate.

Corporations organized under the IBC Act are granted a guaranteed fifty-year tax exempt from the date of incorporation. Thus the corporations are exempt from income tax and capital gains tax; estate, inheritance, succession or similar tax; tax on the transfer of shares; withholding tax; exchange control tax.

The profits or gains of an IBC which is not an investment company shall be exempt from income tax if, within the prescribed time after the expiration of an income year the company satisfies the Commissioner that during the whole of that income year, it was an international business company within the meaning of this Act.

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 Business Corporations regime seems targeted at activities with foreign entities/markets since the tax advantages are granted only to companies that carry on trade outside the territory of Antigua and Barbuda. The IBCs are not permitted to carry on any business activity within Antigua and Barbuda.

d. Assessment

	1a	1b	2a	2b	3	4	5
Antigua and Barbuda – International Business Corporations (IBC)	V	V	V	V	V	X	V

V = harmful

X = not harmful

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 Antigua and Barbuda is 25%. The corporations organized under the International Business Corporations Act of 1982 are granted a guaranteed fifty-year tax exempt from the date of incorporation. Thus the corporations are exempt from income tax and capital gains tax; estate, inheritance, succession or similar tax; tax on the transfer of shares; withholding tax; exchange control tax. 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 Business Corporations regime seems targeted at activities outside the territory of Antigua and Barbuda. The IBCs are not permitted to carry on any business activity within Antigua and Barbuda.

The measure is not available to domestic companies or for transactions within the territory of Antigua and Barbuda.

Criterion 2 – Ring-fencing:

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

The International Business Corporations regime seems targeted at activities with foreign entities/markets since the tax advantages are granted only to companies that carry on trade in the buying or selling of goods or services outside the territory of Antigua and Barbuda. The IBCs are not permitted to carry on any business activity within Antigua and Barbuda. Since the income of the IBCs are not taxable in Antigua and Barbuda, the advantages are ring-fenced from the domestic market and thus, does not, affect the national tax base.

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. There is only one requirement that an IBC must have at least one director.

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.

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 generally set out and published in the relevant legislation. However, it includes two elements of administrative discretion. According to the IBC Act, the Minister responsible for the portfolio of Finance (“Minister”) may grant a further exemption from all or so much of any duty payable under the Customs Duties Ordinance or any other customs impost or surcharge in respect of its business as the Minister thinks reasonable, if the exempt corporation satisfies the Minister that the goods concerned are not being manufactured in the Caricom region, are essential as equipment or fixtures for carrying on his business from within Antigua and Barbuda and are not merely goods that will be used up or expended in the ordinary course of business. The Minister may also grant a specialist incentives when he is satisfied that an IBC requires the services of specially qualified persons in order to do its business effectively from within Antigua and Barbuda and that it can neither acquire those services in Antigua and Barbuda nor acquire them elsewhere without special benefits being made available for them. The conditions for getting further exemption from duties and the specialist incentives do not seem transparent to the extent that the Minister may grant a complete or partial exemption on a discretionary basis since the exact requirements for getting the benefits are not laid down in the law.

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 Corporations regime seems **targeted at activities with foreign entities/markets** since the tax advantages are granted only to companies that carry on trade in the buying or selling of goods or services outside the territory of Antigua and Barbuda.
- The measure **does not include any express requirement for real economic activity or substantial economic presence**.
- The International Business Corporations regime **does not seem transparent** to the extent that **the Minister may grant tax benefits on a discretionary basis** since the requirements and conditions for getting the benefits are not laid down in law.

ANTIGUA AND BARBUDA
LAW (MISCELLANEOUS AMENDMENTS) ACT 2018
ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title
2. Amendment of the International Banking Act, 2016
3. Amendment of the International Business Corporations Act, Cap. 222
4. Amendment of the Antigua and Barbuda Merchant Shipping Act 2006
5. Amendment of the Investment Authority Act 2006
6. Amendment of the Automatic Exchange of Financial Accounts Information Act 2016

[L.S.]



I Assent,

Rodney Williams,
Governor-General.

17th December, 2018.

ANTIGUA AND BARBUDA

LAW (MISCELLANEOUS AMENDMENTS) ACT 2018

No. 26 of 2018

AN ACT to amend the provisions of certain Acts of Parliament to strengthen the effectiveness of laws relating to tax transparency and other incidental and related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows—

1. Short title and commencement

(1) This Act may be cited as the Law (Miscellaneous Amendments) Act, 2018.

(2) Except for the imposition of the Tonnage Tax, these amendments will come into effect on the 31st day of December, 2018; the Tonnage Tax will come into effect on the 1st day of January 2021.

(...)

3. Amendment of the International Business Corporations Act, Cap 222

The International Business Corporations Act, Cap. 222 is amended as follows –

(1) in section 2 – Interpretation – by repealing the definition of “Commission” and replacing it with the following definition –

“ “Commission” means the Financial Services Regulatory Commission;”

(2) in section 4 subsection (1) at paragraph (e) by inserting immediately after the word “activities” the words “approved by the Commission.”

(3) by inserting immediately after section 4 a new section 4A to be worded as follows –

“4A. International Business Corporations and domestic investments

(1) Notwithstanding any other provision, a corporation may invest in, trade with or provide services to persons within the jurisdiction of Antigua and Barbuda if the corporation –

- (a) apply to the Commission for a certificate to be registered to conduct business within Antigua and Barbuda;
- (b) file with the Registrar of Intellectual Property copies of its incorporation documents, the certificate from the Commission and evidence that it is in good standing;
- (c) file with the Registrar of Intellectual Property information on the beneficial ownership of the corporation;
- (d) meet such other requirement as may be prescribed by the Companies Act 1995 and regulations made thereunder.

(2) A corporation that registers and conducts business with residents in Antigua and Barbuda shall be taxed at the applicable domestic rate under the Income Tax Act.”

(4) in section 5 by –

(a) repealing subsection (1) and replacing it as follows –

“(1) The following categories of persons are permitted to incorporate a corporation under the Act –

- (a) any two citizens of Antigua and Barbuda, one of whom is entitled to practice as an Attorney-at-Law in Antigua and Barbuda;
 - (b) A corporation that was incorporated under this Act and holds a license as a registered Corporate Management and Trust Services Provider; or
 - (c) a body corporate authorized by a resolution of the House of Representatives.”
- (b) by repealing subsection (1a) and subsection (3) thereof.

(5) in section 6 subsection (1) by repealing paragraph (f) thereof;

(6) in section 8 by repealing the section in its entirety and replacing it as follows –

“8. Documentation

In addition to the articles of incorporation, an incorporator must send to the commission the documents required by section 67(7), section 129(1), section 327 and the information specified in paragraphs (a) to (e) of section 6A(1).”

(7) in section 27 –

- (a) at subsection (1), by repealing the words, “must be in registered or bearer form and” and replacing these with the words, “must be in the prescribed form only and” .
- (b) by repealing subsections (3) and (4) thereof;

- (8) in section 111 by repealing subsection (5) in its entirety;
- (9) in section 130 by repealing paragraph (d) of subsection (2);
- (10) in PART IV – Division G by repealing sections 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281.
- (11) in section 319 by repealing the section in its entirety and replacing it as follows –

“319. Inspection of register

(1) A person who has paid the prescribed fee is entitled, during normal business hours, to examine the register of International Business Corporations, and to make copies of or extract from a document on the register, except where the document is a report that was sent to the Commission under section 344(2) of this Act.

(2) Subject to subsection (1), the Commission shall, upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of the name, registration number, registered address, registered agent and corporate purpose of the corporation and such other document as requested.”

(...)

Passed the House of Representatives on The 20th day of November, 2018.	Passed the Senate on the 28th day of November, 2018.
Gerald Watt, Q.C., <i>Speaker.</i>	Alicia Williams-Grant <i>President.</i>
Ramona Small, <i>Clerk to the House of Representatives.</i>	Ramona Small, <i>Clerk to the Senate.</i>