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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Saint Lucia's International Business Companies - IBC regime (LC001) – Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

The regime has been amended by Act No 13 of 11 December 2018 which abolished the existing preferential tax treatment:

https://www.saintluciaifc.com/pdf/legislation2008/ibc_amend_2018_13.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 LC001 regime in 2017 (standstill review)

ANNEX 1

Assessment of the old LC001 regime in 2017 (standstill)

a. Description

Under the International Business Companies Act of 1999 and the International Business Companies Regulations of 2000, an international business company shall not, among others, carry on business with persons resident in Saint Lucia or own an interest in immovable property situated in Saint Lucia, other than a lease of property for use as an office from which to communicate with members, or where books and records of the Company are prepared or maintained, as referred to in (4)(e) of the abovementioned Act.

An IBC which complies with this Act and does not carry on business in Saint Lucia may elect to be exempted from income tax or to be liable to income tax on its profits and gains at a rate of 1%.

On the basis of publicly available information, it seems that no taxes of any sort are levied for all transactions made by the IBC outside of the jurisdiction, while the tax at 1% rate may be levied on local transactions. The 1% tax election is for those IBCs waiting to utilize the CARICOM Double Tax Agreement, as once tax is paid in Saint Lucia or any other member jurisdiction, then transactions and payments to any other CARICOM member country are made tax-free.

For purposes of this regime, an IBC shall not be considered to be doing business in Saint Lucia solely because it engages in one or more of the following activities:

(a) maintaining one or more bank, trust on securities accounts in Saint Lucia;

(b) holding meetings of directors or members in Saint Lucia;

(c) maintaining corporate or financial records in Saint Lucia;

(d) maintaining an administrative or managerial office in Saint Lucia with respect to assets or activities outside Saint Lucia;

(e) maintaining a registered agent or registered office in Saint Lucia; or

(f) investing in stocks or entities doing business in Saint Lucia or being a partner in a partnership existing under the laws of Saint Lucia or a beneficiary of a trust or estate which has Saint Lucia as its situs.

Despite any provisions of the Income Tax Act, an IBC that elects to be exempt from tax shall not be required to file any tax returns; an IBC that elects to pay tax, shall file an annual tax return based on annual audited financial statements.

Concerning the accessibility of records, whereas domestic companies, partnerships and businesses have to be registered in the Companies Registrar with disclosure of ownership and annual report concerning this ownership, the IBCs are registered in the IBC Registrar by a registered agent who has been issued a financial and corporate service providers licence. The IBC´s memorandum and the articles of association are to be submitted. The registers of directors and members are not recorded at the public registry, but may be filed as an option.

b. Preferential features/ Benefits available under the EPZ regime

The normal CIT rate is of 33.3%. The IBC is either subject to 1% or fully exempt.

Therefore, a preferential treatment in granted to IBC.

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 & 2 of the Code of Conduct which prohibit such ring-fencing.

Under the IBC regime, the IBC are prohibited from carrying on business with residents in Saint Lucia. The regime is thus targeted to foreign enterprises 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 (IBC are not allowed to enter transactions with residents in Saint Lucia).

Sources of information

Saint Lucia International Financial Centre,

International Business Companies Act, Sovereign Management and Legal

d. Assessment

	1a	1b	2a	2b	3	4	5
St. Lucia – IBCs (LC001)	V	V	V	V	V	?	V

V = harmful

X = not harmful

Explanation

Gateway criterion - Significantly lower level of or no taxation:

The general tax rate in St. Lucia is 33,3%.

IBCs may elect upon registration to be tax exempt or to be liable to income tax on the chargeable income of an IBC at a rate of 1%.

Therefore the level of taxation for an IBC is significantly lower.

Criterion 1 – Targeting non-residents (de jure and de facto):

and Criterion 2 – Ring-fencing:

IBCs which elect to be tax exempt or to pay tax at a rate of 1% may not do business in St. Lucia or carry on business with persons resident in Saint Lucia or own immovable property in St. Lucia except if the Minister declares on application that the IBC is a head office company (condition is that it employs ten or more persons and the property is used only for operations if the IBC)

Wording

An international business company shall not—

carry on business with persons resident in Saint Lucia;

own an interest in immovable property situated in Saint Lucia, other than a lease referred to in subsection;

carry on international banking business, international insurance business or international mutual funds business unless it is licensed to do so under the law in force in Saint Lucia relating to international financial services;

carry on a banking business with a resident whether alone or in conjunction with any other activity, unless it is licensed to do so under the Banking Act;

carry on a shipping business with a resident whether alone or in conjunction with any other activity, unless it has complied with an enactment relating to the carrying on of shipping business;

carry on the business of international financial services representation;

Criterion 3 – Substance:

In reference to the above IBCs are isolated from the domestic market and attract profits which do not reflect real economic activities.

Criterion 4 – Internationally accepted principles:

It is not known if there is an anti-abuse provision.

Criterion 5 - Transparency:

The regulations are not publicly available.

Overall assessment

In light of the assessment made under all Code criteria, the regime is considered overall harmful from a Code of Conduct point of view.