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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Tunisia's Export Promotion Incentives regime (TN001)
– Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

The regime has been abolished through the Finance Law 2019 (Article 37). The regime will be closed to new entrants as of 1 January 2019. Grandfathering will be available for existing beneficiaries until 31 December 2021.

Unofficial French version of the final legislation: see [Annex 2](#).

Official (Arabic) version of the Finance Law 2019:

http://www.finances.gov.tn/index.php?option=com_jdownloads&Itemid=721&view=finish&cid=1523&catid=9&lang=fr

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 TN001 regime in 2017 (standstill review)

Annex 2: Unofficial French version of the final legislation

Assessment of the old TN001 regime in 2017 (standstill)**a. Description**

All tax incentives have been initially introduced under the old Investment Incentives Code (IIC); a new Investment Code was enacted under Law 2016-17 and is applicable as of 1 April 2017. The new Investment Code includes only non-tax incentives. All tax incentives previously available under the IIC are integrated into the Income Tax Code. The old IIC covered the agricultural, industrial, service and tourism sectors. The mining, finance and energy sectors were excluded.

Under the old regime, profits from the export of goods and services were deductible from the taxable base for a period of 10 years as from the date of first export. After the end of that 10-year period the deduction was limited to 50% of such profits.

For the purposes of this measure, exports were deemed to include supplies of services and goods to enterprises whose business related wholly or partially to export, to enterprises operating in economic activity parks, to international commercial companies and to financial and banking organizations dealing mainly with non-residents. The deduction was not available in respect of financial services, leasing transactions, sales of fuel, water and electricity.

b. Preferential features

Export-oriented companies were entitled to the following benefits:

- full exemption from corporate tax (during the first 10 years of operation on income from exports -provided that the company has requested the exemption when filing its tax return-, and a 50% income tax reduction starting from the 11th year for an unlimited period of time;
- full exemption from customs duties and similar taxes on imports, provided that imported goods were necessary for carrying on their activities. VAT was suspended on their purchases regardless of origin (domestic market or imports);
- full exemption from Tunisian social security contributions for foreign personnel who opted to be subject to a foreign social security regime;
- investors subscribing to the initial capital or capital increases of such companies were entitled to an exemption from income tax. In addition, export companies which reinvested part of their profits in their own activities were entitled to exemption from income tax or corporate tax, as the case may be, in respect of such part.

As from 1 January 2014, this incentive was abolished, and profits from the export of goods and services are then subject to corporate tax at the rate of 10%, but companies established before 1 January 2014 may continue to enjoy the tax holiday until the end of the 10-year period.

For financial year 2015, companies producing goods or rendering services wholly for export are exceptionally allowed to sell up to 50% of their revenues realized in 2014 on the domestic market without losing their status as export companies under the IIC or under Law 81 of 1992 related to economic activities parks. In principle, the percentages of the overall revenues that could be sold domestically is 30% for export companies licensed under the IIC.

The Finance Law 2016 clarified that the reduced 10% corporate tax rate is applicable only to income derived from the business activity of the company. Income which is not connected to the business activity is subject to the standard tax rate subject to some exceptions.

c. Possible concerns

A regime limited to foreign taxpayers and/or to operation outside the territory of the jurisdiction does not meet criteria 1 and 2 of the Code of Conduct which forbids this type of ring-fencing. Sources of information

IBFD, http://www.uscib.org/docs/Tunisia_Tax_Incentives_Analysis.pdf

d. Assessment :

	1a	1b	2a	2b	3	4	5
Tunisia – Export promotion incentives (TN001)	V	?	V	?	V	V	?

V = harmful

X = not harmful

Explanation

Significantly lower level of taxation:

The general corporate tax rate in Tunisia is 25%. Under the old regime, Export oriented companies were entitled, among other things, to full exemption from corporate tax during the first 10 years of operation on income from exports and a 50% income tax reduction starting from the 11th year for an unlimited period of time.

As from 1st January 2014, profits from the export of goods and services are subject to corporate tax rate of 10%, provided that the income derives from the business activity of the company concerned. Export oriented companies established in Tunisia before 1st January 2014 may continue to enjoy the abovementioned tax holiday until the end of the 10 – years period. It is unclear whether the unlimited reduction of 50% of the taxable base still applies.

The measure provides for a significantly lower level of taxation. It is therefore potentially harmful within the meaning of paragraph A of the Code.

Criterion 1:

Criterion 1 contains two elements. The first element is whether the measure is exclusively available to non-residents or transactions with non-residents (criterion 1a). The second element is whether it is only or mainly used by non-residents or for transactions with non-residents (criterion 1b).

1a) Criterion 1a concerns the de jure application of the measure.

According to the Tunisian Income Tax Law, the incentive is granted only for profits realized out of the domestic market. Therefore, the provision restricts the benefits to transactions with non-residents.

1b) Criterion 1b is used to complement the assessment under criterion 1a which only looks at the literal interpretation of the measure. It takes account of the de facto effect of the measure. Where the majority of taxpayers (or counterparties to transactions) benefitting from the measure are in fact non-residents the measure will fall foul of criterion 1b.

Tunisia has not yet replied and the relevant data and information lack.

Criterion 2

As regards criterion 2 the division between criteria 2a and 2b is done in the same way as in the case of criterion 1 (i.e. de jure interpretation and de facto analysis). In general, a measure is caught by criterion 2 if the advantages are ring-fenced from the domestic market so that they do not affect the national tax base. In most cases, the evaluation against criterion 2 follows closely that of criterion 1.

2a) What has been written under criterion 1a often applies analogously to criterion 2a.

The reduction only applies to profit from export. The provision excludes domestic transactions from the benefit.

2b) On the basis of the explanations provided above and the marking under criterion 1b, the evaluation of criterion 2b often follows the same reasoning.

Tunisia has not yet replied and the relevant data and information, both on the new regime and the old regime, lack.

Criterion 3

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. There is no express requirement of employment in the Tunisian provisions and the company has only to request the incentive when filling its tax return. Furthermore, it is a condition that the business relates wholly to export, which indicates lack of real economic activities and employment in Tunisia.

Criterion 4

In 2010 Tunisia introduced a general transfer pricing rule for commercial and financial transactions between related parties. The rule provides for the use of uncontrolled price method. When applying this method, either internal or external comparables could be used.

On the basis of past practice of the Code Group a positive evaluation should be given to asymmetrical measures where gains are tax exempt but losses are tax deductible unless they are combined with appropriate anti-abuse provisions. The regime does not appear to include an anti-abuse provision as required under the Code (Paragraph L).

Criterion 5

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.

It is unclear whether the measure is fully set out and published in the relevant legislation and the practice should not involve any administrative discretion.

Overall assessment

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

Unofficial French version of the final legislation

Loi n°2018-56 du 27 décembre 2018 portant loi de finances pour l'année 2019

**Révision du régime fiscal de l'export et
des prestataires des services financiers aux non-résidents**

Article 37 :

- 1) Est abrogée la sous-section III relative à l'exportation de la section I du chapitre IV du code de l'impôt sur le revenu des personnes physiques et de l'impôt sur les sociétés.
- 2) Sont abrogés, les renvois aux articles 67, 68 et 69 du code de l'impôt sur le revenu des personnes physiques et de l'impôt sur les sociétés, là où ils se trouvent dans les textes en vigueur et sont remplacés par le renvoi à la législation fiscale en vigueur, sous réserve des différences de l'expression.
- 3) Est abrogée, l'expression « exportation et » prévue au titre de la sous-section II de la section II du chapitre IV du code de l'impôt sur le revenu des personnes physiques et de l'impôt sur les sociétés.
- 4) Est abrogé, le premier tiret du premier paragraphe de l'article 74 du code de l'impôt sur le revenu des personnes physiques et de l'impôt sur les sociétés.
- 5) Sont abrogés, les premier et troisième tirets prévus au troisième alinéa du paragraphe « a » et le dernier alinéa du même paragraphe « a » du paragraphe I de l'article 52 du code de l'impôt sur le revenu des personnes physiques et de l'impôt sur les sociétés.
- 6) Est abrogé, le dernier paragraphe du paragraphe I bis de l'article 11 du code de l'impôt sur le revenu des personnes physiques et de l'impôt sur les sociétés.