



**Brussels, 15 March 2019
(OR. en)**

7547/19

FISC 193

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Morocco's Coordination Centres regime (MA001)
– Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

The regime has been abolished through the Finance Law 2019 No 80-18 promulgated on 20 December 2018. The regime was closed to new entrants as of 1 January 2019.

<http://www.droit-afrique.com/uploads/Maroc-LF-2019.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 MA001 regime in 2017 (standstill review)

Assessment of the old MA001 regime in 2017 (standstill)

a. Description

Coordination Centres are branches or subsidiaries of a company or of an international group of companies, with their seat outside Morocco, which perform management, coordination or control activities for the exclusive benefit of that company or international group.

Sources: Morocco's tax code

b. Preferential features

The tax base of Coordination Centres is reduced. It is defined as the income from non-operating activities plus 10% of the amount of their operating costs.

c. Possible concerns

A regime limited to foreign tax payers and/or to operations outside the territory of the jurisdiction does not meet criteria 1 and 2 of the Code of Conduct which forbid this type of ring fencing. The Coordination Centres regime applies only to companies that have their seats outside Morocco.

d. Assessment

	1a	1b	2a	2b	3	4	5
Morocco – Coordination Centres (MA001)	V	V	V	V	V	V	X

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 tax base for coordination centre is 10 % of the amount of their operating costs. But as running a Coordination Centre does not lead to significant operating costs, there is hardly any taxable income.

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”

Coordination Centres are branches or subsidiaries of a company or of an international group of companies, with their seat outside Morocco.

The Coordination Centre regime seems targeted to foreign owned enterprises since tax advantages are granted only to foreign owned companies. Shares in Coordination Centres companies may not be held by a person who is a citizen or a resident of or domiciled in Morocco.

The measure is not available companies with shares held by a person who is a citizen or a resident of or domiciled in Morocco.

Criterion 2 – Ring-fencing:

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

The Coordination Centres Companies regime seems targeted to foreign owned enterprises since tax advantages are granted only to foreign owned companies. Since the income of non-domiciled or non-resident persons are not taxable in Morocco, the advantages are ring-fenced from the domestic market and thus, do 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.

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 regime, taxing only cost and not income, is not in line with an internationally embraced (OECD) 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 fully set out and published in the relevant legislation and the practice should not involve any administrative discretion.

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 is considered as overall harmful from a Code of Conduct point of view.
