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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Morocco's Offshore Banks regime (MA004)
– 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 MA004 regime in 2017 (standstill review)

Assessment of the old MA004 regime in 2017 (standstill)**a. Description**

Offshore banks are financial institutions. They must be approved by the tax authorities (who will be advised by the Bank of Morocco) before commencing activities. Activities which may be carried on by offshore banks include:

- Receiving funds in foreign convertible currency belonging to non-residents;
- Transacting business on their own behalf or on behalf of their clientele, relating to investment, exchange arbitration, and collateral or transfer payments in foreign currency or gold;
- Rendering financial assistance to non-residents; and
- Participating in the capital of non-resident enterprises and subscribing to loans issued by such non-resident enterprises.

According to the statistics provided by the Moroccan authorities the regime currently applies to only one company. The benefits for this company expire in January 2019.

b. Preferential features

Banks located in offshore zones benefit from a reduction in corporate income tax for the first 15 years of operation. Banks may opt for a fixed corporate income tax of 25,000 United States Dollar (lump sum tax) or pay the tax at a reduced rate of 10 %.

c. Possible concerns

A regime limited to foreign taxpayers 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 offshore bank regime applies only to financial institutions which offer services only to non-residents.

d. Assessment

	1a	1b	2a	2b	3	4	5
Morocco – Offshore Banks (MA004)	X	X	X	X	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”

Banks, financial institutions and insurance companies are subject to tax at a rate of 37 %. Banks located in offshore zones benefit from a reduction in corporate income tax for the first 15 years of operation. Banks may opt for a fixed corporate income tax of 25,000 United States dollars (lump sum tax) or pay the tax at a reduced rate of 10 %.

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”

1a) The measure is *de lege* available to both residents and non-residents and does not require that the beneficiaries carry out transactions only with non-residents.

1b) The statistics provided by the Moroccan authorities show that the tax benefits have been granted only to domestic companies.

Criterion 2 – Ring - fencing:

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

2a) The measure is *de lege* available to both residents and non-residents and does not require that the beneficiaries carry out transactions only with non-residents.

2b) According to the information available the regime is at this moment only applied to Moroccan entities.

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”

The possibility to opt for a fixed corporate income tax of 25,000 United States dollars (lump sum tax) 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 could be considered as overall harmful from a Code of Conduct point of view.

However, in practice the regime applies to one company and the benefits will expire in 2019. In view of this *de facto* situation the regime is considered as not harmful.
