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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Morocco's Offshore Holding Companies regime (MA005) – 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

Morocco has asked for a grandfathering period extending further than 31 December 2021 for the companies benefitting from the regime before 1 January 2019.

The reasons indicated for this is that the taxpayers have been grated the beneficial tax treatment for a determined time period: 15 years. This concerns 28 entities. The beneficial tax treatment expires in 2032 for the last entity. A decision to cut this period short would be considered as a measure of retroactive tax legislation which would be contrary to Articles 132, 133 and 134 of the Moroccan Constitution. There would according to the Moroccan authorities be a basis for taxpayers to open litigations which would most likely be successful. Against this background it appears that Morocco satisfies the criteria for benefitting from an extended grandfathering for the companies benefitting from the Offshore Holdings regime before 1 January 2019.

The Code of Conduct Group meeting of 30 January 2019 approved the rollback of the regime with an extended grandfathering period until end 2032. This conclusion was endorsed by the ECOFIN Council on 12 March 2019.

Annex 1: Assessment of the old MA005 regime in 2017 (standstill review)

ANNEX 1

Assessment of the old MA005 regime in 2017 (standstill)

a. Description

A company must fulfil the following four conditions in order to be regarded as an offshore holding company:

- The shareholders must be foreign individuals or legal entities;
- The sole object of the company must be the management of portfolios of non-resident companies and the acquisition of holdings in other non-resident companies;
- Its capital must be expressed in a foreign convertible currency; and
- It must carry out all transactions on behalf of non-residents (offshore banks, other legal entities or individuals) in foreign convertible currency.

Sources: IBFD

b. Preferential features

Holding companies located in offshore zones pay a fixed corporate tax equivalent in dirham to 500 US dollars (lump sum tax) during the first 15 years of operation.

The standard corporate tax rate is 30 %.

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 regime applies only to offshore holding companies whose sole object is the management/holding in other non-resident companies.

d. Assessment

	1a	**1b**	**2a**	**2b**	**3**	**4**	**5**
Morocco – Offshore Holding Companies (MA005)	V	V	V	V	V	V	X

V = harmful

X = not harmful

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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 standard corporate income tax rate is 30 %. Holding companies located in offshore zones pay a fixed corporate tax of USD 500 (lump sum tax) during the first 15 years. 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 holding companies regime seems targeted to foreign owned enterprises since the tax advantages are granted only to foreign owned companies. Shares in holding companies may not be held by a natural person or a legal entity that is a citizen or a resident of or domiciled in Morocco.
1b) The measure is not available companies with shares held by a natural person or a legal entity that 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 holding 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 or legal entities 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.

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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 fixed corporate tax of 500 US dollars (lump sum tax) during the first 15 years of operation 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.

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