Council of the European Union

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**FISC 94**

**OUTCOME OF PROCEEDINGS**

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| From: | General Secretariat of the Council |
| To: | Code of Conduct Group (Business Taxation) |
| Subject: | Maldives's Reduced Tax Rate regime (MV001)<br>– Final description and assessment |

**ROLLBACK REVIEW PROCESS (JANUARY 2020)**

On 4 December 2019, Maldives' Parliament adopted the legislation to amend the Reduced Tax Rate regime included in the Business Profit Tax Act (BPTA) (see doc. 7428/20 ADD 1-5), which was deemed harmful due to ring-fencing elements and lack of substance requirements. The President ratified the legislation on 17 December 2019 and it entered into effect on 1 January 2020. The legislation repeals the Reduced Tax Rate Regime.

The Code of Conduct Group (business taxation) (COCG) meeting of 4 February 2020 approved the rollback of the regime. This conclusion was endorsed by the ECOFIN Council on 18 February 2020.

*ADD 1-5: Law 25/2019*

*Annex 1: Assessment of the MV001 regime in 2017 (standstill review)*

Explanation

On 4 December 2019, Maldives' Parliament adopted the legislation to amend the Reduced Tax Rate regime included in the Business Profit Tax Act, which was deemed harmful due to ring-fencing elements and lack of substance requirements. The President ratified the legislation on 17 December 2019 and it entered into effect on 1 January 2020.

In particular, through the Law 25/2019, the Business Profit Tax Act has been repealed. Sections 2b and 7 of the BPTA provided for a preferential tax treatment for certain types of income when generated by resident companies outside of Maldives, under certain conditions. The law has also amended Art. 8 and 9 of the Income Tax Act by introducing different generally applicable tax rates based on companies' income and type of activity.

In particular, while banks are subject to a 25% rate, other entities resident in Maldives are subject to 0% if their income does not exceed MVR 500.000 (approx. EUR 30.000) while profits above the said threshold are subject to a 15% rate.

The new generally applicable CIT rate is 15% and the preferential tax treatment of 0% only applies to small businesses. This new measure does not seem to fall within the scope of the COCG as it does not affect the allocation of business, the Reduced Tax Rate regime should be deemed abolished.

**Conclusion**

In conclusion, the Reduce Tax Rate regime has been repealed. Maldives has therefore met its commitment for criterion 2.1.

**ANNEX 1**

**Assessment of the MV001 regime in 2017 (standstill)**

**Reduced Tax Regime (MV001)**

**a. Description**

Under the Business Profit Tax Act, tax is imposed at the rate of 15% on profits carried out by companies in Maldives exceeding MVR 500.000 in a tax year. A lower rate of 5% is applicable to companies resident in the Maldives generating all of their income from outside the Maldives.

Extract from the Business Profit Tax Act:

Section 2 (b):

Tax on profits from sources outside Maldives shall be charged provided the following conditions are met:

1. The company is registered under the Companies Act of Maldives (Act Number 10/96) and is not resident outside Maldives;

2. Such Company derives income in that period from:

- any business carried on wholly outside Maldives; or

- bonds, shares, debentures, loans or any financial instruments issued or granted by a Person who is not resident in Maldives; or

- bonds, shares, debentures, loans or any financial instruments issued or granted by a Person who is resident in Maldives, for the purpose of any capital project carried on outside Maldives; or

- loans of any nature; or any royalties payable by a Person who is not resident in Maldives; or

- any immovable property situated outside Maldives; and

3. does not carry on any other business or have any other source of income.

Section 7:

- Tax shall be charged for any year on taxable profits of that year within Section 2 of this Act at the following rates:
  - 0 % on taxable profits of the year not exceeding MVR 500.000
  - 5 % on taxable profits of the year exceeding MVR 500.000
- Tax shall be charged for any year on taxable profits of that year not within Section 2 and Section 6 of this Act at the following rates:
  - 0 % on taxable profits of the year not exceeding MVR 500.000
  - 15 % on taxable profits of the year exceeding MVR 500.000

Sources: Maldives Inland Revenue Authority, Maldives Inland Revenue Authority

**b. Preferential:**

Yes, a lower tax rate is applicable.

The normal corporate income tax rate is 15 % on taxable profits of the year exceeding MVR 500.000. For Companies, generating all of their income from outside the Maldives, the reduced corporate income tax rate is 5 % on taxable profits of the year exceeding MVR 500.000. This tax measure provides for a significantly lower effective level of taxation, than those levels which generally apply in Maldives.

**c. Possible concern**:

Our understanding of the Business Profit Tax Act is that under this regime, the benefit of the reduced corporate income tax rate is limited to companies generating all their income from outside the Maldives.

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 and 2 of the Code of Conduct which forbid this type of ring fencing.

**d. Assessment:**

| | **1a** | **1b** | **2a** | **2b** | **3** | **4** | **5** |
|---|---|---|---|---|---|---|---|
| **Maldives -** Reduced Tax Regime | V | V | V | V | V | X | X |

**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 15 % on taxable profits of the year exceeding MVR 500.000.

For companies registered under the Companies Act of Maldives, generating all their income from outside the Maldives, the reduced corporate income tax rate is 5 % on taxable profits of the year exceeding MVR 500.000. 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*"

The reduced tax regime seems targeted at activities with foreign entities/markets since tax advantages are granted only for transactions with persons that are not domiciled or resident in Maldives. Therefore, we consider that the measure is clearly caught by criterion 1a. We therefore propose a tick ("V" - harmful) for criterion 1a. Since the measure is not available for transactions with persons domiciled or resident in Maldives, we would also propose a tick ("V" - harmful) for criterion 1 b.

**Criterion 2 – Ring-fencing:**

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

The reduced tax regime seems targeted at activities with foreign entities/markets since tax advantages are granted only for transactions with persons that are not domiciled or resident in Maldives. Since the income of non-domiciled or non-resident persons are not taxable in Maldives, the advantages are ring-fenced from the domestic market and thus, does not, affect the national tax base. By analogy to the assessment against criterion 1a/b we would propose a tick ("V" - harmful) for criterion 2a/2b.

**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. We would therefore propose a tick ("V" - harmful) for criterion 3.

**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 reduced rate for certain type of income does not contradict any internationally embraced principle. We would therefore propose a cross ("X" – not harmful) for criterion 4."

**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. We would therefore propose a cross ("X" – not harmful) for criterion 5.

**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 should be considered overall harmful from a Code of Conduct point of view.