N°: 53/2013 D.L.E.C.I

21 FEV 2013

FROM THE GENERAL DIRECTOR OF TAXES
TO
THE CHIEF EXECUTIVE OFFICER OF
THE MOROCCAN FINANCIAL BOARD

Subject: Note clarifying certain tax advantages for companies with "Casablanca Finance City" status and their employees

Ref: Letter from CASABLANCA FINANCE CITY - MOROCCAN FINANCIAL BOARD of November 29th, 2012

In your letter cited as per the reference above, you requested clarifications in respect of certain tax provisions relating to CFC companies likely to simplify implementation of tax advantages granted to the said companies and their employees.

The attached note recalls the said tax advantages and provides clarifications with regard to each of the different raised issues.

Note
clarifying certain tax advantages
granted to CFC companies and their employees

I- Reminder of tax advantages granted to CFC companies and their employees

In order to establish Casablanca Finance City as an international financial centre and improve its prospects in terms of development and competitiveness, the 2011 and 2013 Finance Acts completed the provisions of the General Tax Code (CGI) by providing for an attractive tax regime for companies with "CFC" status, as well as for their employees.

These tax advantages are as follows:

A- In terms of corporate tax:

The provisions of Articles 6 and 19 of the CGI as amended by the 2011 Finance Act No. 43-10 provided for:

- **For Services companies with the "Casablanca Finance City" status**, in respect of the profit on their export revenues for the financial period, benefit from:
  - Total exemption from corporate tax for five consecutive financial periods from the first period in which the said status is granted;
  - Taxation at the reduced rate of 8.75% beyond this period.

These same advantages are granted to those companies in respect of net capital gains realised on foreign securities.

- **Regional or international headquarters with the "Casablanca Finance City" status**, benefit from the reduced rate of 10% from the first financial period in which the said status is granted;

In order to determine the tax base of a regional or international headquarter with the said status, Article 8 of the General Tax Code, as amended and completed by the 2011 Finance Act, has specified that, subject to application of the minimum contribution provided for under Article 144 of the General Tax Code (CGI), the tax base of the said headquarter is equal to:

- the higher of (i) taxable income and (ii) 5% of the operating expenses of the said headquarter, if the company makes a profit;

- 5% of the operating expenses of the said headquarter, if the company makes a loss.

B- In terms of personal income tax

In order to also grant preferential tax treatment to employees of companies with CFC status, under the provisions of the 2011 Finance Act, salaried and similar income liable to personal income tax earned by the said employees is subject to a specific flat rate of 20%.

This aforementioned 20% tax rate is granted for a maximum period of five (5) financial periods from the said employees' date of employment.

However, as of January 1st, 2013, the provisions of Article 9 of the 2013 Finance Act have amended Article 73-II (last paragraph) of the General Tax Code to enable employees who believe that they have been overtaxed to benefit, in respect of their income tax return, from a tax refund calculated on the basis of the tax scale provided for by Article 73-1 of the General Tax Code, instead of being taxed at the flat rate of 20%. Any refund will be made before the end of the year in which the tax return is submitted.

In addition, in the event that the said employees have other income, they must also file their income tax return in accordance with the provisions of Article 82 of the General Tax Code.

The flat rate of 20% is applicable to gross salaries, wages and remuneration received on or after January 1st, 2013.

C- In terms of registration fees

In order to encourage companies to apply for the CFC status, under the provisions of the 2013 Finance Act, the said companies are exempt from registration fees on company setup as well as on capital increase.

II- Clarification of certain tax advantages granted to CFC companies and their employees:

The attached table provides clarification with regard to each of the different raised issues.

Questions	Comments
What is the effective date for benefiting from the reduced personal income tax rate of 20%?	Gross salaries, wages and remuneration paid to employees (currently employed or to be recruited) working for CFC companies are subject to income tax at a rate of 20% for a period of 5 years from their date of employment. In terms of personal income tax, the effective date for entitlement to the advantage is the date of employment following the signing of the initial employment contract with a company with the CFC status. However, for employees already employed by the company prior to the latter acquiring the CFC status, the effective date for entitlement to the personal income tax advantage is the decision date for granting the said status to the company which employs them. Thus, for employees hired on or after May 20th in year N, the year in which the company acquires the CFC status, the advantage period runs until May 19th N+5. Beyond this date, the income of the said employee would be subject to the progressive scale of personal income tax in accordance with common law rules.
What constitutes the "tax base" when calculating the 20% income tax rate? Are other types of remuneration received by employees of CFC companies such as allowances and benefits, in cash or in kind, included in the tax base?	Gross salaries, wages and remuneration paid to employees working for CFC companies are subject to income tax at a rate of 20%. Allowances and benefits, in cash or in kind, received by the employee as salary supplements are therefore subject to the same aforementioned tax treatment.

Are expenses, in kind or in cash, directly related to expatriation income tax exempt?	Expenses, in kind or in cash, directly related to expatriation are considered to be additional salary and are subject to income tax in accordance with common law rules. Expenses of this kind paid to an employee working for a CFC company are therefore subject to the flat rate of 20%.
What is the effective date for benefiting from the corporate tax rate of 0%?	Under the provisions of Article 6-I-B-4° of the General Tax Code, entitlement to advantages granted to services companies with "Casablanca Finance City" status takes effect from the financial period in which the CFC status is granted. As the CFC status is granted by decision of the CFC Committee, it follows that the legal consequences of the decision to grant the CFC status take effect from the said decision date. If, in the same year, the company conducts its business for a given period without the CFC status and the remainder of the financial period with the CFC status, the advantages are granted on a pro-rata basis in respect of export revenues and net capital gains on foreign securities realised from the financial period in which the CFC status is granted.
What is meant by “export revenues” when calculating corporate tax for companies with domestic as well as overseas business activities?	According to the provisions of Article 7-IV of the General Tax Code, export revenues eligible for exemption under section 6 (I-B-1°) of the General Tax Code are those relating to the last sale of goods or the last service rendered on Moroccan soil for the direct and immediate purpose of exporting. By “services exports” is meant operations used or consumed overseas for which revenues are generated in foreign currencies.

What is the method for calculating the tax base in respect of corporate tax for different types of companies (financial companies, services providers, regional headquarter etc.)?	Example of how to calculate the minimum base of a regional headquarter under the jurisdiction of Casablanca Finance City: > **<u>If the case of profit-making companies</u>**: Revenue: .... 300,000 MAD Taxable income: .... 20,000 MAD Operating expenses: .... 250,000 MAD The higher of (i) taxable income (MAD 20,000) and (ii) 5% of operating expenses (MAD 12,500) is MAD 20,000. Thus, the applicable tax base is taxable income of MAD 20,000. The amount of tax payable is MAD 2,000 (20,000 X 10%). > **<u>If the case of loss-making companies</u>**: Revenue: .... 300,000 MAD Taxable income:... (20,000) MAD Operating Expenses:... 400,000 MAD

	Tax base	Tax rate	Tax payable
Minimum contribution	300,000	0.50%	1,500
Taxable income	(2,000)	10%	
Minimum base (400,000 x 5%)	20,000	10%	2,000

Given that the taxable income is negative, the amount of tax payable is the higher of (i) the tax charge obtained from applying a rate of 10% to 5% of operating expenses (MAD 2,000) and (ii) the minimum contribution (MAD 1,500).

In this particular case, the amount of tax payable is MAD 2,000 (20,000 X 10%).

> **<u>In the case of the minimum contribution:</u>**

Revenue: 500,000 MAD
Taxable income: (20,000) MAD
Operating expenses: 250,000 MAD

	Tax base	Tax rate	Tax payable
Minimum contribution	300,000	0.50%	1,500
Taxable income	20,000	10%	2,000
Minimum base (250,000 x 5%)	12,500	10%	1,250

	Given that the taxable income is negative, the amount of tax payable is the higher of (i) the tax charge obtained from applying a rate of 10% to 5% of operating expenses (MAD 1,250) and (ii) the minimum contribution (MAD 2,500). In this particular case, the amount of tax payable is MAD 2,500, which corresponds to the minimum contribution. As for other services companies with the CFC status, it should be noted that the method for calculating the tax base in respect of corporate tax is that of common law provided for by Article 8-I of the General Tax Code. This base comprises the taxable income of each accounting period, determined on the basis of the surplus of income over expenditures for the period incurred or borne for the needs of conducting business and taxable in application of the laws and accounting rules in force, amended, if applicable, in accordance with the laws and tax rules in force.
What is the effective date for losing the tax advantages provided for by CFC?	The legal consequences of the decision to withdraw the CFC status take effect from the CFC Commission's decision date. Thus, the decision to withdraw the CFC status results in the loss of the advantages granted to the concerned companies from the date of the said decision. The MFBoard must notify the *Direction Inter Préfectorale des Grandes Entreprises* (Boulevard Rachidi) under the jurisdiction of the "*Direction Régionale de Casablanca"* of this decision.