

## Morocco enacts Finance Law 2020

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### Executive summary

Morocco's Finance Law N° 70-19 relating to financial year 2020 (FL 2020) is now effective and introduced several amendments to Moroccan tax law. The provisions of FL 2020 should be read in conjunction with the recommendations of the National Conference relating to Tax (Assises Nationales de la Fiscalité) which took place in May 2019 and with the conclusions of the European Commission which placed Morocco on the "grey list" of the Common European Union (EU) list of third-country jurisdictions for tax purposes.

This Alert summarizes the main measures introduced by FL 2020.

### Detailed discussion

#### Corporate Income Tax (CIT)

► *Changes in the standard CIT rates (including minimum CIT contribution)*  
FL 2020 amended the progressive rate of CIT that entered into force in 2019, increasing the intermediary rate of 17.5% to 20%.

In addition, the marginal 31% rate has been reduced to 28% for companies performing industrial activities and where taxable income is lower than 100 million Moroccan Dirhams (MAD).

The applicable rates for financial years open as of 1 January 2020 are:

Taxable income (MAD)	Rate
Lower than 300,000	10%
300,001 - 1,000,000	20%
Higher than 1,000,000	31%/28% for industrial companies

In addition, the rate of the minimum contribution to CIT was decreased from 0.75% to 0.5%. As a reminder, its taxable basis includes the turnover plus certain other income.

FL 2020 also introduced a 0.6% rate for companies that remain in a tax loss position (excluding capital allowances) after a 36-month exemption period.

These new rates are applicable to declarations filed as from 1 January 2020, and therefore to financial years ending 31 December 2019 onwards.

	Rate
36 months after start of business date	0%
After the 36-month period:	
1st year of tax loss	0.5%
2nd year + of tax loss	0.6%
Taxable profit position	0.5%

#### ► Change in the export regime

FL 2020 amended the export regime by repealing the five-year exemption that was previously applicable and increased the 17.5% CIT rate to 20%.

The applicable rules could be summarized as follows:

Companies having performed their first export operation before 1 January 2020	Companies having performed their first export operation as from 1 January 2020
Five-year CIT exemption applicable until its expiry	No exemption
Progressive rates limited to 17.5% for 2019 (if exemption period already expired), and to 20% for future FYs after exemption period expiry	Progressive rates limited to 20% afterwards as from first export operation

#### ► Amendment to the Casablanca Finance City (CaFC) tax regime

The changes brought by FL 2020 could be summarized as follows:

	CaFC status obtained before 1 January 2020	CaFC status obtained as from 1 January 2020
Service companies	Five-year CIT exemption	Five-year CIT exemption 15% afterwards 0% WHT on dividends
	8.75% afterwards	
	Only applicable to exports and foreign source capital gains	
	Possibility to opt for the new regime	
International and regional headquarters	15% CIT rate applicable <sup>1</sup>	No distinction between local and export turnover
	CIT basis computed based on standard rules	
	0% Withholding Tax (WHT) on dividends	

## Endnote

1. Date of entry into force yet to be confirmed by the tax authorities.

- *New regime applicable to companies located in Industrial Acceleration Zones (previously named "Export Free Zones")*

FL 2020 changed the name of "Export Free Zones" to "Industrial Acceleration Zones" (IAZ), and changed the regime applicable to companies set up in those zones as from 1 January 2021 as summarized in the below table:

Companies set up in IAZ before 1 January 2021	Companies set up in IAZ as from 1 January 2021
Five-year CIT exemption (only applicable to exports)	Five-year CIT exemption (exports and local turnover)
8.75% CIT rate for the 20 following years (only applicable to exports)	15% flat rate afterwards (exports and local turnover)
15% flat rate afterwards (exports and local turnover)	

- *Five-year CIT exemption followed by taxation at 20% for service outsourcing companies*

FL 2020 introduced a new beneficial regime for companies performing service outsourcing activities inside or outside the dedicated offshoring zones ("plateformes industrielles intégrées" or "P2I") existing in certain cities such as Casablanca, Rabat and Fez.

Such companies benefit from a five-year exemption followed by a taxation limited to 20%.

The definition of service outsourcing is still to be clarified, in particular for companies outside P2Is, since those companies do not need to obtain any specific license to perform their activities.

This new regime is applicable to financial years open as from 1 January 2020.

- *Extension of the intra-group transfer regime to intangible and financial assets*

Finance Law 2017 had introduced a tax neutrality regime for intra-group transfers of capitalized tangible assets, a group constituted by a Moroccan parent company and its subsidiaries held, directly and indirectly, at more than 80%.

Despite the benefits of such provisions for restructuring transactions inside a group, the way it was drafted excluded certain transactions that were typically needed in the context of such restructuring, including in particular transfers of shares and patents.

In that context, FL 2020 extended the scope of this tax neutrality regime to capitalized intangible and financial assets, including intra-group transfers of equity interests and patents.

- *Introduction of an amended declaration made spontaneously or after consulting the tax authorities covering CIT, professional individual income tax, withholding taxes, stamp duties and insurance contract tax*

FL 2020 introduced the possibility for taxpayers identifying irregularities in their tax declarations, resulting in an underassessment of taxable income, to regularize their situation by:

- Filing an amended declaration for financial years 2016, 2017 and 2018 before 1 October 2020.
- Paying the additional taxes before September and December 2020.

Such procedure involves an automatic cancellation of penalties.

In addition, taxpayers going through this procedure may be exempted from tax audit for the financial years regularized, if they consult the tax authorities beforehand, and if an explanatory note made with the assistance of an expert (chartered or licensed accountant) is filed along with the declaration.

Exemption from tax audit may also be available under certain conditions where a specific agreement concluded between the tax authorities and the professional organization to which the taxpayer belongs, and which sets, on the basis of the database available to the tax authorities, the standards on which this adjustment should be carried out.

- *Entry into force of Country-by-Country (CbC) Reporting (CbCR)*

The CbCR will include the country-by-country split of tax and accounting figures of the company, in addition to the identity, place of exercise and nature of activities relating to the multinational group of enterprises that the Moroccan company belongs to.

This reporting must be submitted electronically within 12 months as from the financial year end.

The new Moroccan CbCR will apply to Moroccan companies that:

- Directly or indirectly hold a participation in one or more enterprises or establishments located outside Morocco, and that are required to prepare consolidated accounts,

in accordance with the applicable accounting standards. The new Moroccan CbCR will also apply to companies that would have been required to prepare consolidated accounts if their participations were listed in Morocco.

- ▶ Have an annual consolidated turnover above MAD8,122,500,000 (excl. VAT) in the financial year preceding the one during which the declaration is made.
- ▶ Are held neither directly nor indirectly by any other enterprise located in or outside of Morocco.

This obligation is also applicable to any enterprise which fulfills any of the following conditions:

- ▶ It is directly or indirectly held by an enterprise located in a country that is not required to submit a CbC report and that would have been subject to such obligation if it was located in Morocco.
- ▶ It is directly or indirectly held by an enterprise located in a country with whom Morocco has not signed an exchange of information agreement for tax purposes; or

It has been appointed for this obligation by the group of multinational companies it belongs to and has informed the Moroccan tax authorities accordingly. Indeed, where two or more enterprises subject to Moroccan CIT belonging to the same multinational group are subject to the Moroccan CbCR, one of them can be appointed by the group to submit the declaration on behalf of the others to the extent it informs the tax authorities beforehand.

In addition, CbCR applies to any enterprise subject to Moroccan CIT, directly or indirectly held by an enterprise that is located in a country that concluded with Morocco an exchange of information agreement for tax purposes and is required to submit a CbC report, but that has been informed by the Moroccan tax authorities that such country fails to automatically share the country by country reporting it has in its possession.

Failing to declare or submit the CbC report is punishable by a MAD500,000 fine.

### Individual Income Tax (IIT)

- ▶ *Increase in the tax deduction on retirement pensions and life annuities not exceeding MAD168,000 per year*

Before FL 2020, a 55% tax deduction was applicable to retirement pensions and life annuities for the portion not exceeding MAD168,000 per year, the surplus benefitting from a 40% tax rebate.

FL 2020 increased the 55% deduction to 60%.

- ▶ *Harmonization of the maximum deduction of retirement insurance premium*

Before FL 2020, only premiums relating to retirement insurance contracts entered into as from 1 January 2015 were subject to a deduction cap of 50% of the net taxable salary.

In accordance with FL 2020, all retirement insurance premiums paid as from 1 January 2020 are subject to such limitation, whatever the date of the contract.

- ▶ *New tax neutrality regime applicable to the contribution of shares by an individual to a holding company*

Under FL 2020, individuals that contribute all the equity securities they hold in one or more companies to a Moroccan holding company subject to CIT, are not subject to tax on the net capital gain made on such contribution, to the extent they meet the following conditions:

- ▶ The value of the equity securities contributed must be assessed by a contributions auditor.
- ▶ The individual undertakes in the contribution deed to pay the IIT on the capital gain made upon the contribution when he or she will totally or partially sell, redeem or cancel the securities received as a counterpart to the contribution.
- ▶ With respect to the company benefitting from the contribution, the net capital gain resulting from the sale of the equity securities is determined by the difference between the sale price and the value of the equity securities on the contribution date.

A specific declaration should also be submitted by those individuals within 60 days as from the contribution deed date.

### Value-Added Tax (VAT)

- ▶ *Changes in the specific regime relating to small manufacturers and service providers*

Before FL 2020, small manufacturers and service providers (i.e., with annual turnover below MAD500,000) were excluded from the scope of VAT. As from 1 January 2020, they will enter into the scope of this tax, but will be exempt with no right to deduct input VAT.

FL 2020 also provides that this exemption only applies to individuals and not companies. As such, companies performing manufacturing or service activities with a turnover below MAD500,000 will be subject to VAT.

► *Harmonization of the VAT treatment of participating finance products with those of bank products*

In order to harmonize the tax treatment of Chari'a-compliant participative finance products with those of standard bank products, FL 2020 notably introduced the following provisions:

- VAT exemption on investment goods acquired through a "Mourabaha" agreement
- 10% VAT on "Salam" and "Istina'a" agreements
- Possibility to transfer the VAT deduction right to the acquirers who are subject to VAT for the above agreements
- Exclusion from the input VAT deduction right applicable to credit institutions acquiring goods for the purpose of selling them through Mourabaha, Salam and Istina'a agreements

► *Inclusion of certain goods into VAT*

FL 2020 notably included the following goods in the scope of VAT at a 20% rate:

- Farm equipment with mixed usage
- Imported meat and fish for use in restaurants

► *Change in the VAT rate of certain goods*

FL 2020 changed the rate of the following goods as follows:

- Palm oil: from 10% to 20%
- Museum, cinema and theatre tickets: from 20% to 10%

► *VAT exemptions*

FL 2020 provided for the exemption from VAT of human and animal vaccines as well as certain medicines to be listed in a decree. Also, water pumps working with solar energy or any other renewable energy are now exempt from import VAT where they are used for the agricultural sector.

► *Deletion of the specific VAT rate applicable to wine, alcoholic beverages, gold and platinum artworks*

Before FL 2020 the above-mentioned products were in practice subjected to both a specific VAT rate computed based on their volume or weight, as well as the standard 20% VAT rate based on the sale price (or exempted).

The specific VAT rate based on the volume or weight was deleted from the Moroccan Tax Code to become a new excise tax (Taxe intérieure de consommation), accordingly only the standard 20% VAT rate will now apply on those products.

## Registration Duties

► *New registration duty exemptions*

Moroccan registration duties apply to certain deeds that are mandatorily subject to the registration formality and are generally based on the value mentioned in such deeds.

FL 2020 introduced new exemptions from registration duty for the following deeds:

- Acquisition of immovable goods by persons benefitting from the housing programs named "Cities without slums" (Villes sans bidonvilles) or "Buildings threatening to collapse" (Bâtiments menaçant ruine)
- Acquisition of lands to be used to build social housing through a Mourabaha agreement
- Acquisition of developed lands where existing constructions will be demolished for the purpose of building a hotel

► *New penalty regime with regards to deeds exempt from registration duty*

Before FL 2020, significant uncertainties surrounded the application of penalties to the failure or delay to register deeds mandatorily subject to the registration formality but exempt from the registration duty. This issue became particularly important further to the exemption from registration duties applicable to transfers of shares in Moroccan companies whose predominant business is not real estate.

In that respect, the tax authorities adopted in practice a challengeable position under which they computed penalties based on the theoretical rate applicable in the absence of an exemption, which was according to the tax authorities 4% for transfers of the abovementioned shares, i.e., the rate that was in force before the exemption came into effect.

FL 2020 now clarified this situation and provides for a 0.5% penalty, reduced to 0.25% in the event of a delay not exceeding 30 days, computed on the same tax basis as the registration duties (e.g., sale price mentioned in the deed for the case of transfers of shares). This penalty cannot be lower than MAD500 and cannot exceed MAD100,000.

## Common Provisions

► *Automatic Exchange of Information*

In accordance with the Organisation for Economic Co-operation and Development (OECD) recommendations, FL 2020 introduced the Automatic Exchange of Information for tax purposes in Moroccan domestic law.

Under this new provision, financial institutions are required to identify information relating to the tax residency of all financial account holders and, if applicable, their beneficial holders.

Such financial institutions should communicate to the Moroccan tax authorities, through a template issued by them, all information required for the purpose of applying treaties concluded by Morocco allowing an automatic exchange of information for tax purposes.

Such declaration notably includes information relating to the identification of financial account holders and, if applicable, beneficial holders, as well as financial information relating to those accounts, including income from securities, account balance, redemption value of life insurance and capitalization contracts or assimilated, and capital gains from the sale or redemption of financial assets.

Failure to identify or declare the accounts, as well as the communication of incomplete, insufficient or mistaken information is punishable by a MAD2,000 fine per account.

A decree should clarify the practical modalities of this new provision, including the deadline of the first reporting. FL 2020 already mentioned that the first financial year to be reported will be 2020.

## Other

Several regularization procedures were introduced by FL 2020, among which a spontaneous regularization relating to assets and liquidities held abroad.

This regularization covers assets and liquidities held abroad before 30 September 2019 and declared through the regularization process before 31 October 2020. It will allow the concerned taxpayer to benefit from the cancellation of taxes potentially applicable to those assets and liquidities, and foreign exchange control related penalties and fines.

For regularization purposes, taxpayers should pay a spontaneous contribution amounting to:

- ▶ 10% of the acquisition value of immovable goods, financial assets, securities and other equity or debt securities
- ▶ 5% of liquidities in foreign currency transferred to a Moroccan bank account denominated in foreign currency
- ▶ 2% of liquidities in foreign currency transferred to a Moroccan bank account denominated in MAD

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