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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Code of Conduct Group (Business Taxation) – Report to the Council = Endorsement

Vietnam's Economic zones regime (VN004)

Given that the Economic Zones regime was not considered to be within the scope of the FHTP, the Code of Conduct Group conducted its own assessment of this regime and agreed on the following assessment at its meeting of 14 November 2019:

	1a	**1b**	**2a**	**2b**	**3**	**4**	**5**
Viet Nam – Economic Zones	X	?	X	?	X	X	X

V = harmful
X = not harmful

Explanation:

Gateway criterion

This regime (just like the regimes discussed under 1.1 and 1.2) provides for a taxation rate of i) 15% for 15 years; or ii) a tax exemption for 4 years and 50% of reduction of tax payable for the next 9 years. Given that Vietnam's standard CIT rate is 20%, this regime passes the gateway criterion of the Code of Conduct.

Criteria 1 & 2 – Ring-fencing

The regime is open to both domestic and foreign taxpayers. The tax treatment is the same both for domestic and foreign companies operating in the zone and there are no restrictions on access to the domestic market. This regime does not appear to be ring-fenced.

The COCG does not have any statistics on the use of the regime.

Criterion 3 – Substance requirements

To benefit from the regime, companies established in the Economic zones must be involved in manufacturing activities, production activities, services related to the production such as logistics, hospital services, construction, maintenance, repairs, professional training services or warehousing.

When a company registers to operate within the zone, it has to identify the activities to be conducted. If a company wants to perform services activities, it has to demonstrate that those services are auxiliary to the activity within the zone. Only income that is generated within the zone is eligible for the tax advantage. Income that is being generated from outside the zone is not eligible for any tax advantage. Penalties will be imposed on companies that do not perform the activities indicated in the registration form, and the tax administration denies tax incentives and the deduction of expenses where necessary. Both the Ministry of Planning and Investment and the tax administration perform audits to see if taxpayers are compliant.

Income from ownership and the right to use an IP asset is defined under "Other income", which is explicitly excluded from obtaining tax benefits.

Criterion 4 – Internationally accepted principles

As already assessed for previous regimes, the Vietnamese rules on transfer pricing (from 2017) are largely in line with the rules used in the OECD Transfer Pricing Guidelines. The arm's length principle is applied as a primary system and formulary apportionment is applied to certain limited cases.

Criterion 5 - Transparency

The conditions for benefitting from the regime are clearly set out in various laws and decrees. Moreover, for each activity sector, the agencies/ministries to be consulted on the authorisation process are listed in the legislation. As such, there does not appear to be room for discretional decisions.

Overall assessment

Vietnam's Economic Zones regime is not harmful.