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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Vietnam's export processing zones (VN001) – Final description and assessment

a. Description

Export processing zones are specially designated locations for enterprises specializing in the production of goods for exports, and for the provision of services for such export-oriented activities.

A 10% Enterprise Income Tax (EIT) rate is available for a period of 15 years (standard EIT rate is 20% since 1/1/2016). The normal EIT rate applies after the incentive period. Where these projects are on a large scale, with high or new technology and a special need to attract investment, the incentive period may be extended up to a total period of 30 years.

The preferential rate is available for the entire operational period of enterprises in the education and vocational training, healthcare, cultural, sports and environmental sectors (collectively referred to as social sectors). There is no withholding tax on dividends, interest or royalties.

Source: IBFD:
http://online.ibfd.org/kbase/#topic=doc&url=/collections/cta/html/cta_vn_s_001.html&WT.z_nav=outline&colid=4916&hash=cta_vn_s_1

b. Preferential (lower taxation than normal):

A 10% Enterprise Income Tax (EIT) rate is available for a period of 15 years (standard EIT rate is 20% since 1/1/2016).

c. Possible concern (ring fenced):

Export processing zones are specially designated locations for enterprises specializing in the production of goods for exports, and for the provision of services for such export-oriented activities

d. Assessment by FHTP (April 2018):

Out of scope

e. Assessment by the experts:

	1a	**1b**	**2a**	**2b**	**3**	**4**	**5**
Vietnam – Export processing zones	X	?	X	?	X	X	X

V = harmful
X = not harmful

Explanation

Gateway criterion - Significantly lower level of taxation:

Vietnam-registered enterprises are taxed on their worldwide income. The general Enterprise Income Tax (EIT) rate in Vietnam is 20% for both foreign and domestic companies. Businesses conducting exploration and exploitation of oil and gas and other precious mineral resources are subject to tax rates ranging from 32% to 50%. A 10% EIT rate is available for a period of 15 years for enterprises specializing in the production of goods for exports, and for the provision of services for such export oriented activities. Dividends stemming from (domestic as well as) foreign shareholdings are tax-free and there is no withholding tax on interests or royalties. The measure therefore provides for a significantly lower level of taxation.

Criterion 1 – Targeting non-residents:

Criterion 1a: The measure is not exclusively available to non-residents or transactions with non-residents (criterion 1a). Investment projects can be carried out by enterprises which can be 100% domestic owned or 100% foreign owned.

It is not known whether it is only or mainly used by non-residents or for transactions with non-residents (criterion 1b).

Criterion 2 – Ring-fencing:

Criterion 2a: Application of this measure is not reserved to non-residents only and therefore it is not totally isolated from the domestic market so that it would not have any impact on the national tax base.

It is not known whether it is only or mainly used by non-residents or for transactions with non-residents (criterion 2b).

Criterion 3 - Substance:

It appears to follow from Vietnam Law No 67/2014 and Decree 118/2015 that there are specific requirements with regard to real economic activities and that the activities must physically be in Vietnam.

Article 37 of the Decree requires managers to be managing the apparatus, personnel, staff, employees and officers and providing professional training to officers, employees of Management Committees; recommending jobs to workers in industrial zones and economic zones.

Criterion 4 – Internationally accepted principles:

There is no specific or general anti-abuse provision. However, this has not been required for this type of regime in past Code Group practice.

On 24 February 2017, the government released the Transfer Pricing Decree No. 20/2017/ND-CP to replace the existing regulation, Circular 66/2010/TT-BTC. The Decree will take effect on 1 May 2017. The prescribed transfer pricing methodology generally follows the OECD Transfer Pricing Guidelines although some modifications and additional requirements exist.

Criterion 5 - Transparency:

The legislation, regulation and circular on the regime are publicly available. The measure is set out and published in Decree no. 29-2008.

Law No 67/2014 and Decree 118/2015 appear to provide detailed rules on the procedure for deciding on the establishment or expansion of an industrial zone available in the master plan for development of industrial zones or in the approved general master plan for construction of economic zones.

***Overall assessment*[1]**

In the light of the available information as provided by Vietnam the regime can be assessed by the COCG as not harmful.

1 Endorsed by the ECOFIN Council on 2 October 2018 (doc. 11763/1/18 REV 1).