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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

Mongolia's Remote areas regime (MN002)

Given that the Remote Areas 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
Mongolia – Tax Credit under Corporate Income Tax law	X	X	X	X	X	X	?

V = harmful

X = not harmful

Explanation:

Gateway criterion

The regime provides for a tax credit of 50% for companies located 550 km from the capital Ulaanbaatar in the Province of Aimag and of 90% for companies located 1000 km from the capital in the Province of Soums. The tax benefits are not limited to a specific time-period.

The regime results in a tax rate which is significantly lower than the ordinary rate applied in Mongolia (25%) and thus passes the Gateway criterion.

Criterion 1 & 2 – Ring-fencing

The regime is open to resident as well as non-resident entities. According to the statistics provided by Mongolia, all of the current 27 beneficiaries are resident companies. The majority of the companies (24 out of 27) carry out activities that are not highly mobile. There is no requirement limiting the preferential tax treatment to income from business with non-residents.

The regime does not appear to be ring-fenced and complies with criteria 1 and 2.

Criterion 3 – Substance requirements

Companies wishing to benefit from the advantages of the regime need to:

- ❖ be located in either the Aimag or Soums province;
- ❖ have at least three employees registered and confirmed by corresponding social security contributions;
- ❖ demonstrate that they have a “permanent operation” at the relevant location; and
- ❖ be registered with the local tax authority.

The 27 resident companies currently concerned are active in the following sectors:

- ❖ Construction – 2
- ❖ Factory – 9
- ❖ Car and motorcycle repair shop – 8
- ❖ Hotel – 2
- ❖ Science and technical activity – 1
- ❖ Finance and insurance activity – 2
- ❖ Warehouse and logistic activity – 2
- ❖ Mining activity – 1

Based on this information the regime appears to provide for sufficient substance requirements.

Criterion 4 – Internationally accepted principles

After joining the BEPS Inclusive Framework, the Mongolian Parliament revised its transfer pricing regulations contained in General Taxation Law and associated guidelines in 2019. This adopts the three-tiered transfer pricing documentation requirement, to align with the recommendations from OECD BEPS Action 13. The new requirements will apply from 1 January 2020.

The revision appears to be applicable to all relevant taxpayers and would appear to ensure that the regime is in line with criterion 4.

Criterion 5 - Transparency

The conditions for benefitting from the regime are clearly drawn up in the Mongolian legislation. There are also provisions on how to calculate the tax benefit. As complete information is lacking to determine whether there is any room for discretion, the COCG agreed to a “?” under this criterion. However, in view of the applicable substance requirements this is of only marginal importance.

Overall assessment

In light of the assessment made under all Code criteria, the regime is considered as not harmful under the Code of Conduct.

In addition, it should be noted that the regime only applies to entities established in isolated regions - parts of the jurisdiction which could be defined as disadvantaged regions.
