



Council of the
European Union

013723/EU XXVI. GP
Eingelangt am 06/03/18

Brussels, 6 March 2018
(OR. en)

6671/18

FISC 87
ECOFIN 194

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	The EU list of non-cooperative jurisdictions for tax purposes
	• Compilation of letters seeking commitment

On 14 February 2018, the Code of Conduct Group (Business Taxation) requested, for transparency reasons, the General Secretariat of the Council to publish on its website all letters seeking commitments sent to jurisdictions in the context of the preparation of the EU list of non-cooperative jurisdictions for tax purposes.

This compilation is set out in annex to this document.

[REDACTED]
Ministry of Finance of Albania
Head of drafting fiscal laws unit
Blv Deshmoret e Kombit, No. 3
Tirane
Albania

[REDACTED]
[REDACTED]
General Directorate of Taxation
Head of Tax Treaties Unit

[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Albania

- Taxation: follow-up to the screening process

Dear Madam, Dear Sir,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Albania was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Albania with the set criteria.

We acknowledge that in your reply dated 30 June 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Albania will address the deficiency listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

¹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Albania in order to comply with the set criteria.

Criterion 3

On the basis of the information available, the experts have verified that Albania is not a member of the Inclusive Framework on BEPS. Therefore, we invite Albania to commit, under the procedure specified in the letter to which this annex is attached, to joining the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

████████████████████
Secretary of State for International Finance
Matters

Av. Prat de la Creu 62 – 64
AD500 ANDORRA LA VELLA –
PRINCIPAT D'ANDORRA

Email ██████████
████████████████████

Brussels, 23 October 2017

Dear Mrs Cornella Durany,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), the Principality of Andorra was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016².

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of the Principality of Andorra with the set criteria.

We acknowledge that in your letter dated 29 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that the Principality of Andorra will address the deficiency listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

² The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by the Principality of Andorra in order to comply with the set criteria.

Criterion 2.1

In our letter dated 12 June 2017 we have informed the Principality of Andorra that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of the Principality of Andorra. On the basis of such assessment, it has been found that the regimes named *International Trading Companies* and *Intercompany and Financing* regime have been considered in the process of being eliminated by the Forum on Harmful Tax Practices. In addition, the regimes named *International IP Companies* and *Holding Companies* have been considered in the process of being amended by the Forum on harmful Tax practices. For this reason, we invite the Principality of Andorra to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.


Permanent Secretary of Finance
Ministry FEDICT
The Secretariat
The Valley
ANGUILLA – BWI

Brussels, 26 January 2018

Subject: Letter for the attention of the authorities of Anguilla

- The EU list of non-cooperative jurisdictions for tax purposes

Dear Sir,

By a letter dated 7 November 2017 from the Chair of the Code of Conduct Group (Business Taxation), Anguilla was informed on the outcome of the assessment made by the experts designated to verify the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures.

In the same letter, you were also informed that the Code of Conduct Group decided to put the EU listing process on hold for all jurisdictions that have been severely struck by the devastating storms of September 2017. The Council of the EU confirmed, in December 2017, that the listing process should be put on hold for these jurisdictions and instructed the Code of Conduct Group to pursue the contacts by February 2018, with the view to resolving the concerns by the end of 2018.

In reiterating our sympathy and support, we want to express our hope that Anguilla be on its way towards full recovery from the injurious effects of the hurricanes and managed to rebuild its key infrastructures destroyed by the storms in September 2017.

Being faithful that Anguilla successfully overcame the difficulties encountered because of the natural disasters, we are now contacting you with the aim of restarting the process. To that end, we would now need a firm commitment at high political level that Anguilla will address the deficiencies identified in Annex I, which were already mentioned in annex I of our letter of 7 November 2017. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

Moreover, the compliance of your legal and regulatory framework has in particular been assessed with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing

this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2.. In light of this, experts have provisionally considered the tax system of Anguilla as harmful.

As a result of this, we would like to take this opportunity to verify whether Anguilla intends to address the identified concerns and commit to future changes.

We invite Anguilla to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Anguilla is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Anguilla is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 28 February 2018.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Anguilla in order to comply with the set criteria.

Criterion 3

We acknowledge that in the reply sent on 7 July 2017, you confirmed that Anguilla is not a member of the Inclusive Framework on BEPS and has not implemented the BEPS minimum standards. We also acknowledge that, given the features of your legal system, some of these minimum standards might not be relevant for Anguilla. However, in the same reply, you confirmed that Anguilla intends to implement some of the BEPS minimum standards. Therefore, we invite Anguilla to confirm this commitment to join the Inclusive Framework or to commit to the minimum standard, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
High Commission for Antigua and Barbuda
45, Crawford Place – 2nd floor
London W1H 4LP
UNITED KINGDOM

Cc.

[REDACTED]
Chief Executive Officer, Antigua and Barbuda Financial Services
Regulatory Commission

[REDACTED]
Commissioner, Inland Revenue Department, Antigua and Barbuda

Brussels, 26 January 2018

Subject: Letter for the attention of the authorities of Antigua and Barbuda

- The EU list of non-cooperative jurisdictions for tax purposes

Your Excellency,

By a letter dated 7 November 2017 from the Chair of the Code of Conduct Group (Business Taxation), Antigua and Barbuda was informed on the outcome of the assessment made by the experts designated to verify the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures.

In the same letter, you were also informed that the Code of Conduct Group decided to put the EU listing process on hold for jurisdictions that have been severely struck by the devastating storms of September 2017. The Council of the EU confirmed in December 2017 that the listing process should be put on hold for these jurisdictions and instructed the Code of Conduct Group to pursue the contacts by February 2018 with the view to resolving the concerns by the end of 2018.

In the meantime you sent us a letter dated 8 November 2017 taking note of the concerns raised by the EU experts and showing willingness to further cooperate with the Code of Conduct. Such a letter has been circulated to EU Member States for information.

In reiterating our sympathy and support, we want to express our hope that Antigua and Barbuda be on its way towards full recovery from the injurious effects of the hurricanes and managed to rebuild its key infrastructures destroyed by the storms in September 2017.

Being faithful that Antigua and Barbuda successfully overcame the difficulties encountered because of the natural disasters, we are now contacting you with the aim of restarting the process. To that end, we would like to verify whether Antigua and Barbuda intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Antigua and Barbuda to cooperate with the Code of Conduct and commit, at a high political level, to addressing deficiencies listed in Annex I, which were already mentioned in Annex I of our letter of 7 November 2017. Such a commitment would allow

the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 28 February 2018.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Antigua and Barbuda in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 4 July 2017, you confirmed that Antigua and Barbuda is committed to the OECD Automatic Exchange of Information standard (The Common Reporting Standard) and that the Multilateral Competent Authority Agreement has been signed. However, in the same reply, you confirmed that the OECD Coordinating body has not been notified of the intention to exchange information with all EU Member States. In the reply sent on 8 November 2017, you confirmed that Antigua and Barbuda intends to address the concerns identified. Therefore, we invite Antigua and Barbuda to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 4 July 2017, you confirmed that Antigua and Barbuda has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the reply sent on 8 November 2017, you confirmed that Antigua and Barbuda intends address the concerns identified. Therefore we invite Antigua and Barbuda to confirm, under the procedure specified in the letter to which this annex is attached, this commitment to sign and ratify the MAC, and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 8 June 2017 we have asked Antigua and Barbuda to confirm whether the features of the preferential tax regime named 'The International Business Corporations regime' as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite Antigua and Barbuda to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Antigua and Barbuda to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that in the reply sent on 4 July 2017, you confirmed that Antigua and Barbuda is not a member of the Inclusive Framework on BEPS. However, in the reply sent on 8 November 2017, you confirmed that Antigua and Barbuda intends to address the concerns identified. Therefore, we invite Antigua and Barbuda to confirm this commitment to join the Inclusive Framework or to commit to the minimum standard, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
Deputy Head of the Department of Business
Environment Improvement
Ministry of Economic Development and
Investments of the Republic of Armenia
[REDACTED]

[REDACTED]
Head of the Department of Revenue Policy and
Administration Methodology
Ministry of Finance of the Republic of Armenia
[REDACTED]

[REDACTED]
Head of the Division of International Tax and
Customs Relations
Ministry of Finance of the Republic of Armenia
[REDACTED]

[REDACTED]
Specialist in Financial Monitoring Center
International Relations Division
Central Bank of Armenia
[REDACTED]

[REDACTED]
Chief Tax Inspector of the Foreign Relations
Division
State Revenue Committee of the Republic of
Armenia
[REDACTED]

Brussels, 24 October 2017

Subject: Letter for the attention of the authorities of Republic of Armenia

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 15 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Armenia was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³.

³ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Armenia with the set criteria.

We acknowledge that in your letter dated 14 August 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Armenia will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Armenia in order to comply with the set criteria.

Criterion 1.3

We acknowledge that in the reply sent on 14 August 2017, you confirmed that Armenia has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Armenia intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Armenia to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to sign and ratify the aforementioned convention by end of 2019.

Criterion 2.1

In our letter dated 15 June 2017 we have asked Armenia to confirm whether the features of the preferential tax regimes named *Reduced Rate for Large Exporters* and *Governmentally Approved Projects Outside Armenia* as described in the letter were correct and complete. On the basis of the information received, the experts continue to consider such regime as harmful. We invite Armenia to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Armenia to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that in the reply sent on 14 August 2017, you confirmed that Armenia is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Armenia intends to join the Inclusive Framework and commit to the minimum standard. We invite Armenia to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Ministerie van Financiën en
Overheidsorganisatie

L.G. Smith Boulevard 76
Oranjestad

Aruba

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Aruba

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Aruba was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁴.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Aruba with the set criteria.

As a result, we would like to verify whether Aruba intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Aruba to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiencies listed in Annex 1.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

⁴ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Aruba in order to comply with the set criteria.

Criterion 2.1

In our letter dated 12 June 2017 we have asked Aruba to confirm whether the features of the preferential tax regimes named **Special zone San Nicolas** and **Transparency regime** as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regimes as harmful. We invite Aruba to commit to amending or abolishing the two above mentioned regimes, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Aruba to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that in the reply sent in September, the experts have concluded that Aruba is not a member of the Inclusive Framework on BEPS. Therefore, we invite Aruba to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or to commit to the minimum standard and to communicate the timeline for doing so.

[REDACTED]
Minister-Counsellor
Permanent Mission of the Commonwealth of the Bahamas to the UN
Avenue de France 23 (6th floor)
1202 Geneva
SWITZERLAND

Cc.

[REDACTED]
Ministry of Finance
Legal Officer – Legal Unit
Cecil Wallace Whitfield Centre
West Bay Street
P.O. Box N-3017
Nassau
BAHAMAS

Brussels, 26 January 2018

Subject: Letter for the attention of the authorities of Bahamas

- **The EU list of non-cooperative jurisdictions for tax purposes**

Dear Madam,

By a letter dated 7 November 2017 from the Chair of the Code of Conduct Group (Business Taxation), Bahamas was informed on the outcome of the assessment made by the experts designated to verify the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures.

In the same letter, you were also informed that the Code of Conduct Group decided to put the EU listing process on hold for jurisdictions that have been severely struck by the devastating storms of September 2017. The Council of the EU confirmed in December 2017 that the listing process should be put on hold for these jurisdictions and instructed the Code of Conduct Group to pursue the contacts by February 2018 with the view to resolving the concerns by the end of 2018.

In reiterating our sympathy and support, we want to express our hope that Bahamas be on its way towards full recovery from the injurious effects of the hurricanes and managed to rebuild its key infrastructures destroyed by the storms in September 2017.

Being faithful that Bahamas successfully overcame the difficulties encountered because of the natural disasters, we are now contacting you with the aim of restarting the process. To that end, we would now need a firm commitment at high political level that Bahamas will address the deficiencies identified in Annex I, which were already mentioned in Annex I of our letter of 7 November 2017. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

Moreover, the compliance of your legal and regulatory framework has in particular been assessed

with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2.. In light of this, experts have provisionally considered the tax system of Bahamas as harmful.

As a result of this, we would like to take this opportunity to verify whether Bahamas intends to address the identified concerns and commit to future changes.

We invite Bahamas to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Bahamas is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Bahamas is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

In addition, since the same technical analysis revealed that, in your jurisdiction, legal mechanisms exist that enable the granting of advantages only to non-residents or in respect of transactions carried out with non-residents, in particular, through the incorporation of entities which are not permitted to carry on business in your jurisdiction, we would like to take this opportunity to verify whether Bahamas intends to address the identified concerns and commit to future changes.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 28 February 2018.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by the Bahamas in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 3 November 2017, you confirmed that the Multilateral Competent Authority Agreement was not signed. However, in the same reply, you have stated that you are considering committing to the relevant standard and signing the Multilateral Competent Authority Agreement. We also acknowledge that in the same reply, you confirmed that the Bahamas is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) on the basis of the bilateral approach. However, in the same reply, you have stated that the network of agreements in place does not cover all the EU Member States but that you intend to extend such a network. Therefore, we invite the Bahamas to confirm, under the procedure specified in the letter to which this annex is attached, this commitment, in particular to sign and ratify by the end of 2018 the Multilateral Competent Authority Agreement on CRS or having a network of arrangements in place in order to be able to automatically exchange information with all EU Member States.

Criterion 1.3

We acknowledge that in the reply sent on 3 November 2017, you confirmed that the Bahamas has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that the Bahamas intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Therefore we invite the Bahamas to confirm, under the procedure specified in the letter to which this annex is attached, this commitment to sign and ratify the MAC, and to communicate the timeline for doing so.

Criterion 3

We acknowledge that in the reply sent on 3 November 2017, you confirmed that the Bahamas is not a member of the Inclusive Framework on BEPS and has not implemented the BEPS minimum standards. We also acknowledge that, given the features of your legal system, some of these minimum standards might not be relevant for the Bahamas. However, in the same reply, you confirmed that the Bahamas intends to implement some of the BEPS minimum standards. Therefore, we invite the Bahamas to confirm this commitment to join the Inclusive Framework or to commit to the minimum standard, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Kingdom of Bahrain
Diplomatic chancellery

Chargé d'affaires a.i.
Avenue Louise 250
1050 Bruxelles

Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of the Kingdom of Bahrain
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Bahrain was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified some concerns as regards the possible compliance of Bahrain with the set criteria.

We would now need a firm commitment at high political level that Bahrain will address the deficiencies identified in Annex I. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

Moreover, the compliance of your legal and regulatory framework has in particular been assessed with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

⁵ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2. In light of this, experts have provisionally considered the tax system of Bahrain as harmful.

As a result of this, we would like to take this opportunity to verify whether Bahrain intends to address the identified concerns and commit to future changes.

We invite Bahrain to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Bahrain is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Bahrain is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017, that is the date at which we expect to gather all relevant information from our partners so that our Ministers can take an informed decision in December.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Bahrain in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 24 July, you confirmed that Bahrain is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) and that the Multilateral Competent Authority Agreement has been signed but experts have verified that in fact this notification does not include all EU Member States. However, in the same reply, you have stated your intention to cover all EU Member states for the purpose of the Automatic Exchange of Information. We invite Bahrain to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 24 July 2017, you confirmed that Bahrain has signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, although the ratification instrument has not been deposited yet. However, in the same reply, you confirmed that Bahrain intends to ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Bahrain to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so.

Criterion 3

We acknowledge that in the reply sent on 24 July, you confirmed that Bahrain is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Bahrain intends to join the Inclusive Framework and commit to the minimum standard. We invite Bahrain to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
Director of International Business
Ministry of Industry, International Business,
Commerce and Small Business Development
8th Floor
Baobab Tower
Warrens
St. Michael
BARBADOS

[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Barbados

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 15 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Barbados was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁶.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Barbados with the set criteria.

We acknowledge that in your letter dated 6 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Barbados will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

⁶ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Barbados in order to comply with the set criteria.

Criterion 2.1

In our letter dated 15 June 2017 we have informed Barbados that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Barbados. On the basis of such assessment, it has been found that the regime named *International Financial Service Regime* and the regime named *Credit for overseas projects or services* have been considered potentially harmful by the Forum on Harmful Tax Practices. For this reason, we invite Barbados to commit to amend or abolish the above mentioned regime in order to comply with the criteria applied by the Forum on Harmful Tax Practices and the Code of Conduct Group, and to communicate the timeline for doing so.

On the basis of its assessment, the Forum on Harmful Tax Practices has also found that the regimes named *International Business Companies*; *Exempt Insurance Company*; *Qualifying Insurance Company*; *International Societies with Restricted Liability* and *International Trusts* have been considered as '*in the process of being amended*' by the Forum on Harmful Tax Practices. For this reason, we invite Barbados to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Moreover, the Forum on Harmful Tax Practices has assessed the regime *Fiscal Incentives Act* 'out of scope'. The experts have assessed the legal features of the regime against the criteria set by the Code of Conduct Group. On the basis of the information available the experts have found that the regime is harmful. We invite Barbados to commit, under the procedure specified in the letter to which this annex is attached, to amending or abolishing the above mentioned regime in order to comply with the criteria applied by the Forum on Harmful Tax Practices and the Code of Conduct Group. We invite Barbados to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

[REDACTED]
Commissioner of Income Tax
Income Tax Department
Government of Belize
Charles Bartlett Hyde Building
Mahogany Street Ext.
Belize City
Belize

[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Belize

- Taxation: follow-up to the screening process

Dear Madam,

By a letter dated 15 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Belize was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁷.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Belize with the set criteria.

We acknowledge that in your letter you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Belize will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified

⁷ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Belize in order to comply with the set criteria.

Criterion 2.1

In our letter dated 15 June 2017 we have informed Belize that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Belize. On the basis of such assessment, it has been found that the regime named 1) International business company (IBC) has been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Belize to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

However, a second regime named EPZ was assessed by the experts and on the basis of the information received the experts continue to consider such regime as harmful. We invite Belize to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Belize to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Ministry of Finance of Bermuda

Government Administration Building – 2nd floor
30, Parliament Street
Hamilton HM 12
Bermuda

Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of Bermuda

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Bermuda was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁸.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified some concerns as regards the possible compliance of Bermuda with the set criteria.

The compliance of your legal and regulatory framework has in particular been assessed with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion

⁸ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

2.2.. From the technical analysis it has been positively acknowledged that there are substance requirements provided for under your legislation for the banking and insurance sectors. Nonetheless from the technical analysis it emerged that you should evaluate to introduce these requirements more horizontally thus covering all the sectors and industries in your jurisdiction having an international dimension. In light of this, experts have provisionally considered the tax system of Bermuda as harmful.

As a result of this, we would like to take this opportunity to verify whether Bermuda intends to address the identified concerns and commit to future changes.

We invite Bermuda to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Bermuda is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Bermuda is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017, that is the date at which we expect to gather all relevant information from our partners so that our Ministers can take an informed decision in December.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

[REDACTED]
Head of Section
Fiscal Affairs Department
Ministry of Finance and Treasury

Bosnia and Herzegovina

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Bosnia and Herzegovina

- Taxation: follow-up to the screening process

Dear Madam,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Bosnia and Herzegovina was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁹.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Bosnia and Herzegovina with the set criteria.

We acknowledge that in your letter dated 28 June 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Bosnia and Herzegovina will address the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

⁹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Bosnia and Herzegovina in order to comply with the set criteria.

Criterion 1.2 – No Membership of GF but commitment to join (Developing countries no FC)

We acknowledge that in the reply sent on 28 June 2017, you confirmed that Bosnia and Herzegovina is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). However, in the same reply, you confirmed that Bosnia and Herzegovina is considering joining the Global Forum. We invite Bosnia and Herzegovina to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 1.3 – MAC to be signed

We acknowledge that in the reply sent on 28 June 2017, you confirmed that Bosnia and Herzegovina has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. Therefore, we invite Bosnia and Herzegovina to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

Criterion 3

We acknowledge that in the reply sent on 28 June 2017, you confirmed that Bosnia and Herzegovina is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Bosnia and Herzegovina intends to join the Inclusive Framework and commit to the minimum standard. We invite Bosnia and Herzegovina to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

[REDACTED]
(Director, Tax Policy)
**Ministry of Finance & Economic
Development**
Private Bag 008
Gaborone, Botswana

[REDACTED]
(General Manager, Technical Services)
**Botswana Unified Revenue Service
(BURS)**
Private Bag 0013
Gaborone, Botswana

Brussels, 24 October 2017

Subject: Letter for the attention of the authorities of Republic of Botswana

- Taxation: follow-up to the screening process

Dear Madam, Dear Sir,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Botswana was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹⁰.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Botswana with the set criteria.

We acknowledge that in your letter dated 28 June 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Botswana will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

¹⁰ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Botswana in order to comply with the set criteria.

Criterion 1.3

We acknowledge that in the reply sent on 28 June 2017, you confirmed that Botswana has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Botswana intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Botswana to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to sign and ratify the aforementioned convention by end of 2019.

Criterion 2.1

In our letter dated 8 June 2017 we have informed Botswana that, should Botswana join the Inclusive Framework on BEPS, we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regime of Botswana. In the reply sent on 28 June 2017, you confirmed that Botswana has joined the Inclusive Framework on BEPS. On the basis of the FHTP assessment, it has been found that the regime named *Botswana International Financial Services Centre Companies* (BITCC) has been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Botswana to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Federal Revenue & Customs Service of Brazil

[REDACTED]
General-Coordinator of International Relations

[REDACTED]
Deputy General-Coordinator of International Relations

Mission of Brazil to the EU

[REDACTED]
Secretary

Ministry of Foreign Affairs

[REDACTED]
Head of the Tax and Financial Cooperation Division

[REDACTED]
Assistant, Tax and Financial Cooperation Division

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Federative Republic of Brazil

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Brazil was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹¹.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Brazil with the set criteria.

We acknowledge that in your letter dated 8 July, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Brazil will address the deficiency listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-

¹¹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Brazil in order to comply with the set criteria.

Criterion 2.1

In our letter dated 19 June 2017 we have asked Brazil to confirm whether the features of the preferential tax regime named **Export Processing Zone** as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite Brazil to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Brazil to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

[REDACTED]
Financial Secretary
Ministry of Finance
British Virgin Islands Government
33 Admin Drive
Road Town, Tortola
BRITISH VIRGIN ISLANDS, VG1110

Cc.

[REDACTED]
Director & UK/EU Representative
British Virgin Islands Government
BVI London Office
15, Upper Grosvenor Street
London W1K 7PJ
UNITED KINGDOM

Brussels, 26 January 2018

Subject: Letter for the attention of the authorities of British Virgin Islands

- The EU list of non-cooperative jurisdictions for tax purposes

Dear Sir,

By a letter dated 7 November 2017 from the Chair of the Code of Conduct Group (Business Taxation), the British Virgin Islands was informed on the outcome of the assessment made by the experts designated to verify the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures.

In the same letter, you were also informed that the Code of Conduct Group decided to put the EU listing process on hold for jurisdictions that have been severely struck by the devastating storms of September 2017. The Council of the EU confirmed in December 2017 that the listing process should be put on hold for these jurisdictions and instructed the Code of Conduct Group to pursue the contacts by February 2018 with the view to resolving the concerns by the end of 2018.

In reiterating our sympathy and support, we want to express our hope that the British Virgin Islands be on its way towards full recovery from the injurious effects of the hurricanes and managed to rebuild its key infrastructures destroyed by the storms in September 2017.

Being faithful that the British Virgin Islands successfully overcame the difficulties encountered because of the natural disasters, we are now contacting you with the aim of restarting the process. To that end, we would now need a firm commitment at high political level that the British Virgin Islands will address the deficiencies identified in Annex I, which were already mentioned in Annex I of our letter of 7 November 2017. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The compliance of your legal and regulatory framework has in particular been assessed with

reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2.. In light of this, experts have provisionally considered the tax system of the British Virgin Islands as harmful.

As a result of this, we would like to take this opportunity to verify whether the British Virgin Islands intends to address the identified concerns and commit to future changes.

We invite the British Virgin Islands to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, the British Virgin Islands is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. The British Virgin Islands is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 28 February 2018.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Director of the office of the Minister of
Finance
Av. Amílcar Cabral,
CP 30-Praia, Cidade da Praia
Republic of Cabo Verde

National Directorate of State Revenue/
Tax and Customs Justice Service
Av. Amílcar Cabral No.63
CP 563 Cidade da Praia
Republic of Cabo Verde

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Cabo Verde
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 15 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Cabo Verde was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹²[1].

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Cabo Verde with the set criteria.

We acknowledge that in your letter, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Cabo Verde will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the

¹² The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Cabo Verde in order to comply with the set criteria.

Criterion 1.2

We acknowledge that in your reply of 14 August 2017, you confirmed that Cabo Verde is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). However, in the same reply, you confirmed that Cabo Verde is considering joining the Global Forum. We invite Cabo Verde to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 1.3

We acknowledge that in your reply of 14 August 2017, you confirmed that Cabo Verde has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Cabo Verde intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Cabo Verde to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to sign and ratify the aforementioned convention by end of 2019.

Criterion 2.1

In our letter dated 15 June 2017 we have asked Cabo Verde to confirm whether the features of the preferential tax regime named *International financial institutions* as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite Cabo Verde to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Cabo Verde to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that Cabo Verde is not a member of the Inclusive Framework on BEPS. Therefore, we invite Cabo Verde to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Ministry of Financial Services Policy & Legislation
[REDACTED]

Government Administration Building
133 Elgin Avenue, Box 126
Grand Cayman KY1-9000
Cayman Islands

[REDACTED]

Ministry of Financial Services & Home Affairs
[REDACTED]

Suite 126
Government Administration Building
Grand Cayman KY1-9000
Cayman Islands

[REDACTED]

Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of the Cayman Islands

- Taxation: follow-up to the screening process

Dear Madam, Dear Sir,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Cayman Islands was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹³.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified some concerns as regards the possible compliance of Cayman Islands with the set criteria.

The compliance of your legal and regulatory framework has in particular been assessed with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements

¹³ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2.. In light of this, experts have provisionally considered the tax system of Cayman Islands as harmful.

In addition the same technical analysis revealed that, in your jurisdiction, legal mechanisms exist that enable the granting of advantages only to non-residents or in respect of transactions carried out with non-residents, in particular, through the incorporation of entities which are not permitted to carry on business in your jurisdiction.

As a result of this, we would like to take this opportunity to verify whether Cayman Islands intends to address the identified concerns and commit to future changes.

We invite Cayman Islands to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Cayman Islands is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Cayman Islands is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. In addition Cayman Islands is asked to abolish or amend legal mechanisms that enable the granting of advantages only to non-residents or in respect of transactions carried out with non-residents. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017, that is the date at which we expect to gather all relevant information from our partners so that our Ministers can take an informed decision in December.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

██████████
Chief Executive Office
Cook Islands Financial Services
Development Authority

██████████
Treasurer/Collector/Comptroller
Revenue Management Division
Ministry of Finance and Economic
Management

██████████
Director of International Affairs
Ministry of Foreign Affairs and
Immigration

Brussels, 24 October 2017

Subject: Letter for the attention of the authorities of the Cook Islands

- Taxation: follow-up to the screening process

Dear Sir, Dear Madam,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), the Cook Islands were invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹⁴.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of the Cook Islands with the set criteria.

We acknowledge that in your letter dated 30 June 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that the Cook Islands will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct

¹⁴ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by the Cook Islands in order to comply with the set criteria.

Criterion 2.1

In our letters dated 12 June and 22 September 2017 we have asked the Cook Islands to confirm whether the features of the preferential tax regime named *International Companies*, *International Insurance Companies*, *Overseas Insurance Companies*, *International Captive Insurance Companies*, *Encouragement of New Industry or Enterprise*, *Development Projects*, as described in the letter were correct and complete.

On the basis of the information received the experts continue to consider regimes *International Companies*, *International Insurance Companies*, *International Captive Insurance Companies* and *Development Project* as harmful. We invite the Cook Islands to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite the Cook Islands to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that in the reply sent on 30 June 2017, you confirmed that the Cook Islands are not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that the Cook Islands intend to join the Inclusive Framework and commit to the minimum standard. We invite the Cook Islands to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Ministerie van Financiën
Pietermaai 4/4a
Willemstad
Curacao

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Curacao

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Curaçao was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2017¹⁵.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Curaçao with the set criteria.

We acknowledge that in your letter dated 30 June 2017 you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Curaçao will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

¹⁵ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Curaçao in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 30 June 2017, you confirmed that Curaçao is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) and that the Multilateral Competent Authority Agreement has been signed but you also confirmed that the OECD Coordinating body has not been notified of the intention to exchange information with all EU Member States. However, in the same reply, you have stated your intention to cover all EU Member states for the purpose of the Automatic Exchange of Information. We invite Curaçao to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.2

We acknowledge that in the reply sent on 30 June 2017, you confirmed that Curaçao has been attributed a rating by the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum) that is not in line with the international standards applied by the experts. We confirmed by email on 21 August 2017 that Curaçao's existing Global Forum rating would be taken into account for this process. Therefore, we invite Curaçao to commit to address the deficiencies identified by the Global Forum in order to obtain at least a 'largely compliant' rating and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so.

Criterion 2.1

In our letter dated 8 June 2017 we have informed Curaçao that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Curaçao. On the basis of such assessment, it has been found that the regime named E-zone companies, the regime named Export companies, and the regime named *Tax Exempt Entity* have been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Curaçao to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.


Financial Secretary, Ministry of Finance
5th Floor, Financial Centre
Kennedy Avenue
Roseau
COMMONWEALTH OF DOMINICA

Brussels, 26 January 2018

Subject: Letter for the attention of the authorities of Dominica

- The EU list of non-cooperative jurisdictions for tax purposes

Dear Madam,

By a letter dated 7 November 2017 from the Chair of the Code of Conduct Group (Business Taxation), Dominica was informed on the outcome of the assessment made by the experts designated to verify the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures.

In the same letter, you were also informed that the Code of Conduct Group decided to put the EU listing process on hold for all jurisdictions that have been severely struck by the devastating storms of September 2017. The Council of the EU confirmed in December 2017 that the listing process should be put on hold for these jurisdictions and instructed the Code of Conduct Group to pursue the contacts by February 2018 with the view to resolving the concerns by the end of 2018.

In the meantime you sent us a letter dated 19 December 2017 taking note of the concerns raised by the EU experts and showing willingness to further cooperate with the Code of Conduct. Such a letter has been circulated to EU Member States for information.

In reiterating our sympathy and support, we want to express our hope that Dominica be on its way towards full recovery from the injurious effects of the hurricanes and managed to rebuild its key infrastructures destroyed by the storms in September 2017.

Being faithful that Dominica successfully overcame the difficulties encountered because of the natural disasters, we are now contacting you with the aim of restarting the process. To that end, we would like to verify whether Dominica intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Dominica to cooperate with the Code of Conduct and commit, at a high political level, to addressing deficiencies listed in Annex I, which were already mentioned in Annex I of our letter of 7 November 2017. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group

would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 28 February 2018.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Dominica in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 30 June 2017, you confirmed that Dominica was not applying the OECD Automatic Exchange of Information standard (the Common Reporting Standard) and that the Multilateral Competent Authority Agreement was not signed. However, in the reply sent on 19 December 2017, you have stated that you are considering committing to the relevant standard and signing the Multilateral Competent Authority Agreement. We invite Dominica to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 30 June 2017, you confirmed that Dominica has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the reply sent on 19 December 2017, you confirmed that Dominica intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Dominica to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 8 June 2017 we have asked Dominica to confirm whether the features of the preferential tax regimes named 'International Business Companies', 'Offshore Banking' and 'General Incentive under the Fiscal Incentives Act (FIA)' as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite Dominica to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Dominica to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that in the reply sent on 30 June 2017, you confirmed that Dominica is not a member of the Inclusive Framework on BEPS. However, in the reply sent on 19 December 2017, you confirmed that Dominica intends to join the Inclusive Framework and commit to the minimum standard. We invite Dominica to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Faroe Islands Ministry of Finance

[REDACTED]
Chief Adviser, Head of Legal Affairs
Ministry of Finance
PO Box 2039, Tinganes
FO-110. Torshavn
Faroe Islands

[REDACTED]
Head of Mission
Mission of the Faroes to the EU
Rue d'Arlon 69-71
1040 Brussels, Belgium

Brussels, 23 October 2017

Dear Sir, Dear Madam,

By a letter dated 12/06/2017 from the Chair of the Code of Conduct Group (Business Taxation), Faroe Islands was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹⁶.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Faroe Islands with the set criteria.

We acknowledge that in your reply dated 13/7/2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Faroe Islands will address the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified

¹⁶ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
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ANNEX I**Request for commitment by the Chair of the Code of Conduct Group**

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Faroe Islands in order to comply with the set criteria.

Criterion 3

We acknowledge that in the reply sent on 13/7/2017, you confirmed that Faroe Islands is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Faroe Islands intends to join the Inclusive Framework and commit to the minimum standard. We invite Faroe Islands to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
Diplomatic chancellery
Square Plasky 92-94
1030 Bruxelles

[REDACTED]
Ambassador Extraordinary and
Plenipotentiary

Head of Mission (EU, EAEC)

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Fiji

- Taxation: follow-up to the screening process

Your Excellency,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Fiji was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹⁷.

Since you have not replied to the letter, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Fiji with the set criteria.

As a result, we would like to verify whether Fiji intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Fiji to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiencies listed in Annex 1.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend

¹⁷ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitments by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Fiji in order to comply with the set criteria.

Criterion 1.2

On the basis of the information available, the experts have verified that Fiji is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). Therefore, we invite Fiji to commit to join the Global Forum or to be assessed by the same and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 1.3

On the basis of the information available, the experts have concluded that Fiji has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended. Therefore, we invite Fiji to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

Criterion 2.1

In our letter dated 8 June 2017 we have asked Fiji to confirm whether the features of the preferential tax regime named 1) Exporting companies, 2) Income Communication Technology (ICT) incentive, 3) Concessionary rate of tax for regional or global headquarters, as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite Fiji to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Fiji to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that Fiji is not a member of the Inclusive Framework on BEPS. Therefore, we invite Fiji to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

[REDACTED]
Head of sector for tax and customs policy
Ministry of Finance

[REDACTED]
General Directorate Skopje

[REDACTED]
Deputy Head of sector for tax policy
Ministry of Finance

[REDACTED]
General Directorate Skopje

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the former Yugoslav Republic of Macedonia
- Taxation: follow-up to the screening process

Dear Sir, Dear Madam,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), the Former Yugoslav Republic of Macedonia was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹⁸.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of the Former Yugoslav Republic of Macedonia with the set criteria.

We acknowledge that in your reply dated 26 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that the Former Yugoslav Republic of Macedonia will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

¹⁸ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

ANNEX I TO THE TEMPLATE

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by the Former Yugoslav Republic of Macedonia in order to comply with the set criteria.

Criterion 1.3

We acknowledge that in the reply sent on 26 July 2017, you confirmed that the Former Yugoslav Republic of Macedonia has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that the Former Yugoslav Republic of Macedonia intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite the Former Yugoslav Republic of Macedonia to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to sign and ratify the aforementioned convention by end of 2019.

Criterion 3

We acknowledge that in the reply sent on 26 July 2017, you confirmed that the Former Yugoslav Republic of Macedonia is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that the Former Yugoslav Republic of Macedonia intends to commit to the minimum standard. We invite the Former Yugoslav Republic of Macedonia to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

[REDACTED]

[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Georgia
- Taxation: follow-up to the screening process

Dear Madam, Dear Sir

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Georgia was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹⁹.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Georgia with the set criteria.

We acknowledge that in your letter dated 4 July 2017 you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Georgia will address the deficiencies listed in Annex 1. Such a

¹⁹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Georgia in order to comply with the set criteria.

Criterion 2.1

In our letter dated 8 June 2017 we have informed Georgia that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Georgia. However, as the Forum on Harmful Tax Practices has assessed the regimes *Free industrial zones (FIZ)* and *Special Trade Company* “out of scope”, the experts have assessed the legal features of the regimes against the criteria set by the Code of Conduct Group. On the basis of the information available the experts have found that these regimes are harmful. We invite Georgia to commit, under the procedure specified in the letter to which this annex is attached, to amending or abolishing the above mentioned regimes in order to comply with the criteria applied by the Forum on Harmful Tax Practices and the Code of Conduct Group, or give evidence of the fact that the regimes are not actually harmful. We invite Georgia to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

[REDACTED]
Head of Tax Agency
Skattestyrelsen
Intaleqqap Aqqutaa nr. 1
Postboks 1605
3900 Nuuk
Greenland

[REDACTED]
Head of Representation
Greenland Representation to the
European Union
Rue d'Arlon 73

1040 Bruxelles

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Greenland

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Greenland was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²⁰.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Greenland with the set criteria.

We acknowledge that in your letter dated 30 June 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Greenland will address the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

²⁰ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Greenland in order to comply with the set criteria.

Criterion 3

We acknowledge that in the reply sent on 30 June 2017 you confirmed that Greenland is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Greenland intends to join the Inclusive Framework and commit to the minimum standard. We invite Greenland to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Grenada Ministry of Finance

[REDACTED]
Deputy Comptroller
Inland Revenue Division

[REDACTED]
Comptroller of Inland Revenue

Embassy of Grenada

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Grenada

- Taxation: follow-up to the screening process

Dear Madam, Dear Sir,

By a letter dated 22 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Grenada was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²¹.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Grenada with the set criteria.

We acknowledge that in your letter dated 5 September 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Grenada will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

²¹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Grenada in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 5 September 2017, you confirmed that Grenada is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) and that the Multilateral Competent Authority Agreement has been signed but you also confirmed that the secondary legislation had not been enacted for implementing the standard in your domestic law. However, in the same reply, you have stated your intention to enact such legislation. We invite Grenada to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 5 September 2017, you confirmed that Grenada has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Grenada intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Grenada to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 22 June 2017 we have asked Grenada to confirm whether the features of the preferential tax regimes named 1) International Companies, 2) Offshore banking, 3) International Insurance, 4) International trusts, 5) Fiscal Incentives under various Acts, 6) Export processing / commercial free zones enterprises, as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regimes as harmful. We invite Grenada to commit to amending or abolishing the above mentioned regimes, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Grenada to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that in the reply sent on 5 September 2017, you confirmed that Grenada is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Grenada intends to join the Inclusive Framework and commit to the minimum standard. We invite Grenada to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Government of Guernsey
Policy & Resources Committee

[REDACTED]
Sir Charles Frossard House
La Charroterie
St Peter Port GY1 1FH
Guernsey

[REDACTED]
Cc:
[REDACTED]
[REDACTED]

Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of Guernsey
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Guernsey was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²².

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified some concerns as regards the possible compliance of Guernsey with the set criteria.

The compliance of your legal and regulatory framework has in particular been assessed with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing

²² The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2.. In light of this, experts have provisionally considered the tax system of Guernsey as harmful.

As a result of this, we would like to take this opportunity to verify whether Guernsey intends to address the identified concerns and commit to future changes.

We invite Guernsey to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Guernsey is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Guernsey is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017, that is the date at which we expect to gather all relevant information from our partners so that our Ministers can take an informed decision in December.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Hong Kong
Financial Services and the Treasury Bureau

Principal Assistant Secretary for Financial Services
and the Treasury

Assistant Secretary for Financial Services and the
Treasury

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Hong Kong
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Hong Kong was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²³.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Hong Kong with the set criteria.

We acknowledge that in your letter dated 4 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Hong Kong will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

²³ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Hong Kong in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 4 July 2017, you confirmed that Hong Kong is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) on the basis of the bilateral approach. However, in the same reply, you have stated that the network of agreements in place does not cover all the EU Member States but that you intend to extend such a network. We invite Hong Kong to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 4 July 2017, you confirmed that Hong Kong does not participate in the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that the jurisdiction you are dependent on intends to extend to Hong Kong the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Hong Kong to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 19 June 2017 we have informed Hong Kong that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Hong Kong. On the basis of such assessment, it has been found that three regimes named *Corporate treasury centres* (CTC), *Offshore Reinsurance* and *Offshore captive insurance* have been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Hong Kong to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

In our letter dated 19 June 2017 we have also asked Hong Kong to confirm whether the features of the two preferential tax regimes named *Offshore funds* and *Offshore Private Equity Funds* as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regimes as harmful. We invite Hong Kong to commit to amending or abolishing the above mentioned regimes, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Hong Kong to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Isle of Man Government
Income Tax Division

Government Office
Bucks Road
Douglas IM1 3TX
Isle of Man

Cc.

Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of the Isle of Man

- Taxation: follow-up to the screening process

Dear Madam,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Isle of Man was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²⁴.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified some concerns as regards the possible compliance of Isle of Man with the set criteria.

The compliance of your legal and regulatory framework has in particular been assessed with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been

²⁴ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2.. In light of this, experts have provisionally considered the tax system of Isle of Man as harmful.

As a result of this, we would like to take this opportunity to verify whether Isle of Man intends to address the identified concerns and commit to future changes.

We invite Isle of Man to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Isle of Man is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Isle of Man is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017, that is the date at which we expect to gather all relevant information from our partners so that our Ministers can take an informed decision in December.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
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Ministry of Finance and the Public Service
Director, International Trade Relations
Unit, Taxation Policy Division
[REDACTED]
National Heroes Circle
Kingston 4
Jamaica

[REDACTED]
Tax Administration Jamaica
Commissioner General's Executive
Office

[REDACTED]
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36, Trafalgar Road
Kingston 10
Jamaica

[REDACTED]
Brussels, 26 October 2017

Subject: Letter for the attention of the authorities of the Jamaica

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Jamaica was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²⁵.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Jamaica with the set criteria.

We acknowledge that in your letter dated 7 July 2017 you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Jamaica will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

²⁵ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Jamaica in order to comply with the set criteria.

Criterion 1.3

We acknowledge that in the reply sent on 7 July 2017 you confirmed that Jamaica has signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, although the ratification instrument has not been deposited yet. However, in the same reply, you confirmed that Jamaica intends to ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters by 31 October 2017. We invite Jamaica to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 2.1

In our letter dated 19 June 2017 we have asked Jamaica to confirm whether the features of the preferential tax regime named *Industrial export related incentives* as described in the letter were correct and complete. On the basis of the information received the experts acknowledged that such regime is no longer in force and the last number of companies availing of it will cease to benefit from 2023. In line with the procedure adopted by the OECD Forum on Harmful Tax Practices, any grandfathering mechanisms can be accepted only if these do not extend beyond 2021 or, for non-IP regimes, under exceptional circumstances, even beyond that date provided that documentation on the material litigation risk is provided. We invite Jamaica to provide the relevant documentation that justify the extension of grandfathering provisions beyond 2021 or commit to amend the grandfathering or abolish before 2021 in order to comply with the criteria applied by the Forum on Harmful Tax Practices and the Code of Conduct Group.

Government of Jersey

[REDACTED]

International Affairs Adviser to the Chief Minister

Cyril le Marquand House

P.O. Box 140

St Helier JE4 8QT

Jersey

[REDACTED]

Cc.

[REDACTED]

Head of International Agreements

[REDACTED]

Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of Jersey

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Jersey was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²⁶.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified some concerns as regards the possible compliance of Jersey with the set criteria.

The compliance of your legal and regulatory framework has in particular been assessed with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been

²⁶ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2.. In light of this, experts have provisionally considered the tax system of Jersey as harmful.

As a result of this, we would like to take this opportunity to verify whether Jersey intends to address the identified concerns and commit to future changes.

We invite Jersey to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Jersey is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Jersey is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017, that is the date at which we expect to gather all relevant information from our partners so that our Ministers can take an informed decision in December.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

[REDACTED]
Director of the Planning and Studies
Directorate

[REDACTED]
Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Hashemite Kingdom of Jordan
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 15 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Jordan was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²⁷.

Since you have not replied to the letter, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Jordan with the set criteria.

As a result, we would like to verify whether Jordan intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Jordan to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiencies listed in Annex 1.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

²⁷ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitments by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Jordan in order to comply with the set criteria.

Criterion 1.2

On the basis of the information available, the experts have verified that Jordan is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). Therefore, we invite Jordan to commit to join the Global Forum or to be assessed by the same and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 1.3

On the basis of the information available, the experts have concluded that Jordan has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended. Therefore, we invite Jordan to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

Criterion 2.1

In our previous letter we confirmed that Jordan, being a jurisdiction of relevance for the Forum for Harmful Tax Practices (FHTP), we would have taken stock of the assessment conducted by the FHTP for the purpose of evaluating your preferential tax regime against criterion 2.1. The result of the assessment conducted by the FHTP has considered your regime as potentially harmful. We invite Jordan to commit to amend or abolish the above mentioned regime in order to comply with the criteria applied by the Forum on Harmful Tax Practices and the Code of Conduct Group [or provide new evidence that the regime is actually not harmful]. We invite Jordan to communicate the timeline for doing so.

Criterion 3

On the basis of the information available, the experts have verified that Jordan is not a member of the Inclusive Framework on BEPS. Therefore, we invite Jordan to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Republic of Korea
Ministry of Strategy and Finance
[REDACTED]
Deputy Director of International Tax Division
[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Korea
- Taxation: follow-up to the screening process

Dear Madam,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Korea was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²⁸.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Korea with the set criteria.

We acknowledge that in your email dated 3 July you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Korea will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

²⁸ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Korea in order to comply with the set criteria.

Criterion 2.1

In our letter dated 19 June 2017 we have informed Korea that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Korea. However, as the Forum on Harmful Tax Practices has assessed the two regimes: *Foreign Investment Zone (FIZ)* and *Free Trade/Economic Zones (KFEZ)* ‘out of scope’, the experts have assessed the legal features of the regimes against the criteria set by the Code of Conduct Group. On the basis of the information available the experts have found that the regimes are harmful. ,we invite Korea to commit, under the procedure specified in the letter to which this annex is attached, to amending or abolishing the above mentioned regime in order to comply with the criteria applied by the Forum on Harmful Tax Practices and the Code of Conduct Group, or give evidence of the fact that the regime is not actually harmful. We invite Korea to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

**FISCAL AUTHORITY
Principality of Liechtenstein**

Head of Fiscal Authority

**Aeulestrasse 38 | P.O. Box 684
FL-9490 Vaduz**

Brussels, 24 October 2017

Subject: Letter for the attention of the authorities of the Principality of Liechtenstein
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Liechtenstein was informed that the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016²⁹, would take into account the ongoing bilateral dialogue with the Code Of Conduct Group and assessments by the FHTP.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects. In addition, as a result of the ongoing bilateral dialogue with the Code of Conduct Group, deficiencies have been identified as regards the compliance of Liechtenstein with the criterion on fair taxation.

We nevertheless acknowledge that in your reply to the questionnaire, dated 7 July 2017, and through your ongoing engagement with the Code of Conduct Group, you have shown a willingness to address identified shortcomings. We also note your appearance at the Code of Conduct Group meeting of 17 October 2017 where you discussed your identified regimes with EU Member States, and committed to amending the harmful aspects of the *Tax Exempt Corporate Income - dividends and capital gains* regime.

In welcoming your engagement, we would now need a firm commitment at a high political level that Liechtenstein will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

In addition, as requested in the Code of Conduct Group meeting of 17 October 2017, the Group would like Liechtenstein to provide appropriate written data on the actual use of the *Private Assets Structures (PAS)* regime, and to clarify the calculations that it presented orally in the meeting.

²⁹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the Code of Conduct Group and the proposed actions to be undertaken by Liechtenstein in order to comply with the set criteria.

Criterion 2.1

In our letter dated 19 June 2017 we have informed Liechtenstein that we would take stock of the assessment conducted by the main Code of Conduct Group and the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Liechtenstein. On the basis of such assessments, the Code of Conduct Group has considered the regime named *Tax Exempt Corporate Income – dividends and capital gains* harmful . due to the absence of appropriate anti-abuse measures for the dividend exemption and asymmetric treatment of capital gains and losses. Equally, the regime named *Interest Deduction on Equity* has been considered harmful due to the lack of appropriate anti-abuse provisions. We invite Liechtenstein to commit to amend or abolish the above mentioned regimes in order to comply with the criteria applied by the Code of Conduct Group. We invite Liechtenstein to communicate the timeline for doing so.


Head of Office
The Macao Economic and Trade Office
to the European Union
Avenue Louise 326 b. 16

1050 Brussels

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Macao

- Taxation: follow-up to the screening process

Dear Madam,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Macao was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³⁰.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Macao with the set criteria.

We acknowledge that in your reply dated 26 June 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Macao will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

³⁰ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Macao in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 26 June 2017, you confirmed that Macao is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) on the basis of the bilateral approach. However, in the same reply, you have stated that the network of agreements in place does not cover all the EU Member States but that you intend to extend such a network. We invite Macao to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 26 June 2017, you confirmed that Macao does not participate in the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that the jurisdiction you are dependent on intends to extend to Macao the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Macao to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 12 June 2017 we have informed Macao that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regime of Macao. On the basis of such assessment, it has been found that the regime named *Offshore companies* has been considered in the process of being eliminated/amended by the Forum on Harmful Tax Practices. For this reason, we invite Macao to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
Deputy Undersecretary, Tax Division
Ministry of Finance, Malaysia
[REDACTED]
[REDACTED]

[REDACTED]
Head of Section, Tax Division
Ministry of Finance, Malaysia
[REDACTED]
[REDACTED]

Brussels, 24 October 2017

Subject: Letter for the attention of the authorities of Malaysia

- **Taxation: follow-up to the screening process**

Dear Sir,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Malaysia was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³¹. Malaysia was also asked to provide such information with regard to Labuan Island.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Malaysia and Labuan Island with the set criteria.

We acknowledge that in your letter dated 13 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Malaysia and Labuan will address the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct

³¹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitments by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Malaysia in order to comply with the set criteria.

Criterion 2.1

In our letter dated 19 June 2017 we have informed Malaysia that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Malaysia. On the basis of such assessment, it has been found that the regimes named *Special economic regions*; *Pioneer Status*, *Biotechnology industry*; *MSC Malaysia Status*; *Headquarter regime* (principal hub); *Inward re-insurance* and *offshore insurance regime* have been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Malaysia to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

In the same letter dated 19 June 2017 we have informed Labuan Island that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Labuan Island. On the basis of such assessment, the regimes named *Labuan Financial Services* and *Labuan Finance and Leasing* have been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Labuan Island to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Maldives Inland Revenue Authority

[REDACTED]
Malé 20379
Maldives

[REDACTED]
Deputy Director General
Planning

[REDACTED]
Manager
Planning

[REDACTED]
[REDACTED]
Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Maldives

- Taxation: follow-up to the screening process

Dear Madam,

By a letter dated 15 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Maldives was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³².

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Maldives with the set criteria.

We acknowledge that in your letter, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Maldives will address the deficiencies listed in Annex 1. Such a commitment

³² The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Maldives in order to comply with the set criteria.

Criterion 1.3

We acknowledge that in the reply, you confirmed that Maldives has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Maldives intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Maldives to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

Criterion 2.1

In our letter dated 15 June 2017 we have asked Maldives to confirm whether the features of the preferential tax regime named 1) Reduced Tax Regime as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite Maldives to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Maldives to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that in the reply, you confirmed that Maldives is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Maldives intends to join the Inclusive Framework and commit to the minimum standard. We invite Maldives to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Ministry of Finance
Taxation, Revenue, Customs & Treasury Division
[REDACTED]
Majuro, MH 96960
Marshall Islands

[REDACTED]
Cc.

[REDACTED]
Secretary, Ministry of Finance
[REDACTED]

Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of the Marshall Islands

- Taxation: follow-up to the screening process

Dear Madam, Dear Sir,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Marshall Islands was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³³.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified some concerns as regards the possible compliance of Marshall Islands with the set criteria.

We would now need a firm commitment at high political level that Marshall Islands will address the deficiencies identified in Annex I. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

Moreover, the compliance of your legal and regulatory framework has in particular been assessed with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements

³³ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2.. In light of this, experts have provisionally considered the tax system of Marshall Islands as harmful.

As a result of this, we would like to take this opportunity to verify whether Marshall Islands intends to address the identified concerns and commit to future changes.

We invite Marshall Islands to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Marshall Islands is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Marshall Islands is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017, that is the date at which we expect to gather all relevant information from our partners so that our Ministers can take an informed decision in December.

Sincerely,

Fabrizia Lapecorella


Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Marshall Islands in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 25 August 2017, you confirmed that Marshall Islands is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) and that the Multilateral Competent Authority Agreement has been signed but experts have verified that in fact this notification does not include all EU Member States. However, in the same reply, you have stated your intention to cover all EU Member states for the purpose of the Automatic Exchange of Information. We invite Marshall Islands to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.2

We acknowledge that in the reply sent on 25 August 2017, you confirmed that Marshall Islands has been attributed a rating by the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum) that is not in line with the international standards applied by the experts although Marshall Islands has applied for a fast-track procedure to assess your legal framework. However, in the same reply, you confirmed that Marshall Islands intends to address the deficiencies identified by the Global Forum in order to obtain a rating at least equivalent to 'largely compliant'. We invite Marshall Islands to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 3

We acknowledge that in the reply sent on 25 August 2017, you confirmed that Marshall Islands is not a member of the Inclusive Framework on BEPS and has not implemented the BEPS minimum standards. We also acknowledge that, given the features of your legal system, some of these minimum standards might not be relevant for Marshall Islands. However, in the same reply, you confirmed that Marshall Islands intends to implement some of the BEPS minimum standards. We invite Marshall Islands to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so, specifying in particular whether it intends to introduce the Country by Country reporting as defined under the BEPS Action 13.

Republic of Mauritius

**Ministry of Finance & Economic
Development**

Lead Analyst

Mauritius Revenue Authority

Director Large Taxpayers Department

Attorney General's Office

Deputy Solicitor General

Brussels, 23 October 2017

Dear Sirs,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Mauritius was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³⁴.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Mauritius with the set criteria.

We acknowledge that in your letter dated 6 July 2017 you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Mauritius will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct

³⁴ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Mauritius in order to comply with the set criteria.

Criterion 2.1

In our letter dated 19 June 2017 we have informed Mauritius that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Mauritius. On the basis of such assessment, it has been found that the regimes named: *Global Business Company 1*, *Global Business Company 2*, *Freeport Zone*, *Captive Insurance* and *Banks Holding a Banking Licence* under the Banking Act 2004 has been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Mauritius to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
Head of Budgetary Income Unit
Department of State Budget Policy and Planning
Ministry of Finance of Mongolia

[REDACTED]
[REDACTED]
Chief of Taxation Administration and Cooperation
Department
General Authority of Taxation

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Mongolia

- Taxation: follow-up to the screening process

Dear Madam, Dear Sir,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Mongolia was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³⁵.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Mongolia with the set criteria.

We acknowledge that in your letter dated 3 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Mongolia will address the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the

³⁵ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Mongolia in order to comply with the set criteria.

Criterion 1.2 – No Membership of GF but commitment to join

We acknowledge that in the reply sent on 3 July 2017, you confirmed that Mongolia is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). However, in the same reply, you confirmed that Mongolia is considering joining the Global Forum. We invite Mongolia to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 1.3 – MAC to be signed

On the basis of the information available, the experts have concluded that Mongolia has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended. Therefore, we invite Mongolia to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

Criterion 3

We acknowledge that in the reply sent on 3 July 2017, you confirmed that Mongolia is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Mongolia is in the process of evaluating to join the Inclusive Framework and commit to the minimum standard. We invite Mongolia to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Tax Administration – Montenegro

████████████████████
Senior Advisor I
████████████████████
████████████████████

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Montenegro

- Taxation: follow-up to the screening process

Dear Madam,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Montenegro was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³⁶.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Montenegro with the set criteria.

We acknowledge that in your letter dated 7 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Montenegro will address the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend

³⁶ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Montenegro in order to comply with the set criteria.

Criterion 1.2 – No Membership of GF but commitment to join

We acknowledge that in the reply sent on 7 July 2017, you confirmed that Montenegro is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). However, in the same reply, you confirmed that Montenegro is considering joining the Global Forum. We invite Montenegro to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 1.3 – MAC to be signed but commitment to sign and ratify

We acknowledge that in the reply sent on 7 July 2017, you confirmed that Montenegro has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Montenegro intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Montenegro to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to sign and ratify the aforementioned convention by end of 2019.

Criterion 3

We acknowledge that in the reply sent on 7 July 2017, you confirmed that Montenegro is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Montenegro intends to join the Inclusive Framework and commit to the minimum standard. We invite Montenegro to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

[REDACTED]

Directeur de la Législation, des Etudes et de la
Coopération Internationale

Direction Générale des Impôts

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Kingdom of Morocco

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 15 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Morocco was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³⁷.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Morocco with the set criteria.

We acknowledge that in your letter dated 18 August 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Morocco will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

³⁷ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitments by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Morocco in order to comply with the set criteria.

Criterion 1.3

On the basis of the information available, the experts have concluded that Morocco participates in the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, although the ratification instrument has not yet been deposited by the relevant Country. Therefore, we invite Morocco to commit, under the procedure specified in the letter to which this annex is attached, to ratify the MAC as amended, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

Criterion 2.1

In our letter dated 15 June 2017 we have asked Morocco to confirm whether the features of the preferential tax regimes named 1) Coordination Centres, 2) Export Enterprises, 3) Export Free Zones (EFZ) or Free Trade Zones (FTZ), 4) Offshore banks, 5) Offshore Holding Companies, as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regimes as harmful. We invite Morocco to commit to amending or abolishing the above mentioned regimes, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Morocco to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that Morocco is not a member of the Inclusive Framework on BEPS. Therefore, we invite Morocco to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Republic of Namibia
Diplomatic chancellery
Avenue de Tervuren 454
1150 Bruxelles

[REDACTED]
Ambassador Extraordinary and Plenipotentiary
Head of Mission (EU, EAEC)

[REDACTED]
Commissioner: Inland Revenue

[REDACTED]
Director: Taxpayers & Investigation

[REDACTED]
Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Namibia

- Taxation: follow-up to the screening process

Dear Sir, Dear Madam,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Namibia was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³⁸.

Since you have not replied to the letter, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Namibia with the set criteria.

As a result, we would like to verify whether Namibia intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Namibia to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

³⁸ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Namibia in order to comply with the set criteria.

Criterion 1.2

On the basis of the information available, the experts have verified that Namibia is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). Therefore, we invite Namibia to commit to join the Global Forum or to be assessed by the same and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by the end of 2019.

Criterion 1.3

On the basis of the information available, the experts have concluded that Namibia has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended. Therefore, we invite Namibia to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by the end of 2019.

Criterion 2.1

In our letter dated 12 June 2017 we have asked Namibia to confirm whether the features of the preferential tax regimes named Export Processing Zones, and Exporters Regime as described in the letter were correct and complete. In the absence of reply and on the basis of publicly available information the experts continue to consider such regime as harmful. We invite Namibia to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Namibia to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that Namibia is not a member of the Inclusive Framework on BEPS. Therefore, we invite Namibia to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

[REDACTED]
Deputy Secretary Revenue
Ministry of Finance
Republic of Nauru

[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Nauru

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Nauru was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016³⁹.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Nauru with the set criteria.

We acknowledge that in your letter dated 7 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Nauru will address the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

³⁹ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Nauru in order to comply with the set criteria.

Criterion 3

On the basis of the information available, the experts have concluded that Nauru is not a member of the Inclusive Framework on BEPS. Therefore, we invite Nauru to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or to commit to the minimum standard and to communicate the timeline for doing so.

Ambassadeur extraordinaire et plénipotentiaire

Bruxelles, le 26 octobre 2017

Objet: Lettre à l'attention des autorités françaises

- Fiscalité: suivi de l'exercice d'évaluation

Monsieur l'Ambassadeur,

A la réunion du Groupe Code de Conduite (Taxation directe des entreprises) du 18 septembre 2017 les Autorités françaises ont accepté de fournir des informations complémentaires sur la Nouvelle Calédonie pour évaluer le respect des critères décidés par le Conseil de l'UE.

Ces critères concernent les domaines de la transparence, de la taxation équitable et l'implémentation des mesures contre l'érosion de la base fiscale et le transfert de bénéfice (anti-BEPS). Ils ont été définis par le Conseil dans ses "Conclusions du Conseil sur les critères et le processus relatifs à l'établissement de la liste de l'Union européenne des pays et territoires non coopératifs à des fins fiscales" du 8 novembre 2016⁴⁰.

Nous souhaitons remercier les Autorités françaises pour la réponse et pour la coopération dont on a fait part. Les explications et les informations accessibles pour le public ont permis aux experts de clarifier certains points mais aussi d'identifier des défaillances concernant le respect des critères par la Nouvelle Calédonie.

Nous accusons réception de la lettre du 6 octobre 2017 dans laquelle les Autorités françaises nous avez signifié la volonté de résoudre les dysfonctionnements identifiés. En remerciant pour cette réponse, nous avons besoin maintenant d'un engagement ferme pris à un haut niveau politique que la Nouvelle Calédonie résoudra les défaillances listées dans l'annexe 1. Le Groupe Code de Conduite pourrait alors prendre en compte positivement un tel engagement dans son analyse en cours.

Le Groupe Code de Conduite ne recommandera pas au Conseil de l'Union Européenne d'inclure dans la liste des pays ou des territoires non coopératifs les pays ou territoires qui ont pris l'engagement de corriger les défaillances identifiées au plus tard pour le 31 décembre 2018. Pour répondre à cet objectif, le Groupe Code de Conduite souhaite à la date indiquée ci-dessous, recevoir un calendrier précis et une description des étapes de l'implémentation des modifications à apporter.

Le Groupe Code de Conduite continuera à suivre les engagements pris pour décider s'ils ont été respectés, et si besoin est, recommandera une mise à jour de la liste des pays ou des territoires non

⁴⁰ Ces Conclusions du Conseil sont publiées officiellement dans le Journal officiel de l'Union européenne: JO C 461, 10.12.2016, page 2.

coopératifs à des fins fiscales.

Nous vous serions reconnaissants de bien vouloir nous faire parvenir votre réponse pour le 17 novembre 2017.

Veuillez agréer, Monsieur l'Ambassadeur, mes salutations les plus respectueuses,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Demande d'engagements par la Présidence du Groupe du Code de Conduite

L'annexe I liste les défaillances identifiées par les experts désignés par le Groupe du Code de Conduite ainsi que les remédiations proposées qui doivent être mises en place par la Nouvelle Calédonie afin de répondre aux critères du Code.

Critère 1.1

Nous accusons réception de la réponse envoyée le 6 octobre dans laquelle les Autorités Françaises confirment que la Nouvelle Calédonie n'a pas implémenté la norme d'échange automatique de renseignements relatifs aux comptes financiers de l'OCDE et que l'Accord multilatéral entre autorités compétentes n'a pas été signé.

Cependant, les Autorités françaises précisent dans la même correspondance la Nouvelle Calédonie envisage de s'engager à respecter la norme d'échange automatique et à signer l'Accord multilatéral entre autorités compétentes. Nous invitons la Nouvelle Calédonie, le cas échéant par l'intermédiaire des Autorités Françaises, à confirmer cet engagement, en suivant la procédure spécifiée dans la lettre à laquelle cette annexe est attachée et à communiquer un calendrier de mise en place.

Critère 1.2

Nous accusons réception de la réponse envoyée le 6 octobre dans laquelle les Autorités Françaises confirment que la Nouvelle Calédonie n'est pas membre du Forum Mondial sur la transparence et l'échange de renseignements à des fins fiscales (ci-après le Forum Mondial).

Cependant, les Autorités françaises précisent dans la même correspondance que la France va procéder à une demande en ce sens auprès du Forum Mondial pour la Nouvelle Calédonie. Nous invitons la Nouvelle Calédonie, le cas échéant par l'intermédiaire des Autorités Françaises, à confirmer cet engagement, en suivant la procédure spécifiée dans la lettre à laquelle cette annexe est attachée et à communiquer un calendrier de mise en place.

Critère 1.3

Nous accusons réception de la réponse envoyée le 6 octobre dans laquelle les Autorités Françaises confirment que la Nouvelle Calédonie n'a pas signé la Convention concernant l'assistance administrative mutuelle en matière fiscale.

Cependant, les autorités françaises précisent dans la même correspondance que la France va demander à l'OCDE une extension de la portée de la Convention concernant l'assistance administrative mutuelle en matière fiscale afin d'y intégrer la Nouvelle Calédonie.

Nous invitons la Nouvelle Calédonie, le cas échéant par l'intermédiaire des Autorités Françaises, à confirmer cet engagement, en suivant la procédure spécifiée dans la lettre à laquelle cette annexe est attachée et à communiquer un calendrier de mise en place.

Critère 3

Nous accusons réception de la réponse envoyée le 6 octobre dans laquelle les Autorités Françaises confirment que la Nouvelle Calédonie n'est pas un membre du Cadre Inclusif du BEPS.

Cependant, les autorités françaises confirment dans la même correspondance que la Nouvelle Calédonie souhaite s'engager à respecter les standards minimums du BEPS.

Nous invitons la Nouvelle Calédonie, le cas échéant par l'intermédiaire des Autorités Françaises, à confirmer cet engagement, en suivant la procédure spécifiée dans la lettre à laquelle cette annexe est attachée et à communiquer un calendrier de mise en place.

Republic of Niue
Diplomatic chancellery
Rue Berckmans 10
1060 Bruxelles

[REDACTED]

[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Niue
- Taxation: follow-up to the screening process

Dear Madam, Dear Sir,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Niue was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁴¹.

Since you have not replied to the letter, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Niue with the set criteria.

As a result, we would like to verify whether Niue intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Niue to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend

⁴¹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Niue in order to comply with the set criteria.

Criterion 2.1

In our letter dated 12 June 2017 we have asked Niue to confirm whether the features of the preferential tax regime named Exempt and Offshore Companies as described in the letter were correct and complete. In the absence of further information and based on the publicly available information the experts continue to consider such regime as harmful. We invite Niue to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Niue to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that Niue is not a member of the Inclusive Framework on BEPS. Therefore, we invite Niue to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so.

[REDACTED]
Director
Directorate of tax conventions
Ministry of Finance
Oman
[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Sultanate of Oman

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Oman was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016 ⁴².

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Oman with the set criteria.

We acknowledge that in your letter dated 2 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that [name of the jurisdiction] will address the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

⁴² The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Oman in order to comply with the set criteria.

Criterion 1.1

On the basis of the information available, the experts have concluded that Oman is not compliant with the Automatic Exchange of Information standard (the CRS). Therefore, we invite Oman to commit to the following and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so:

- Commit to the OECD Automatic Exchange of Information standard
- Sign either the Multilateral Competent Authority Agreement or sign bilateral agreements with all EU Member States
- Enact the primary/secondary legislation for implementing the standard in your domestic law
- Notify the OECD coordinating body with the list of all EU Member States with a view to activate the exchange of information with all of them.

Criterion 1.2

On the basis of the information available, the experts have verified that Oman is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). Therefore, we invite Oman to commit to join the Global Forum or to be assessed by the same and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so.

Criterion 1.3

On the basis of the information available, the experts have concluded that Oman has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended. Therefore, we invite Oman to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so.

[REDACTED]
Acting Director
Bureau of Revenue and Taxation in Palau
Republic of Palau National Government
P.O. Box 6051
Koror, Palau 96940

[REDACTED]

[REDACTED]

Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of Palau
- Taxation: follow-up to the screening process

Your Excellency,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Palau was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁴³.

Since you have not replied to the letter, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Palau with the set criteria.

As a result, we would like to verify whether Palau intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct to positively consider such commitment, we invite Palau to cooperate with the Code of Conduct and commit, at a high political level, to addressing the deficiency/deficiencies listed in Annex 1.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

⁴³ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Palau in order to comply with the set criteria.

Criterion 1.1

On the basis of the information available, the experts have concluded that Palau is not compliant with the Automatic Exchange of Information standard (the CRS). Therefore, we invite Palau to commit to the following and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so:

- Commit to the OECD Automatic Exchange of Information standard
- Sign either the Multilateral Competent Authority Agreement or sign bilateral agreements with all EU Member States
- Enact the primary/secondary legislation for implementing the standard in your domestic law
- Notify the OECD coordinating body with the list of all EU Member States with a view to activate the exchange of information with all of them.

Criterion 1.2

On the basis of the information available, the experts have verified that Palau is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). Therefore, we invite Palau to commit to join the Global Forum or to be assessed by the same and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so.

Criterion 1.3

On the basis of the information available, the experts have concluded that Palau has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended. Therefore, we invite Palau to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so.

Criterion 3

On the basis of the information available, the experts have verified that Palau is not member of the Inclusive Framework on BEPS and has not implemented the BEPS minimum standards. We also acknowledge that, given the features of your legal system, not all these minimum standards might be relevant for Palau. Therefore, we invite Palau to commit, under the procedure specified in the letter to which this annex is attached, at least to the Country by Country reporting as defined under the BEPS Action 13, and to communicate the timeline for doing so.


Director General
Republic of Panama
Ministry of Economy and Finance

General Directorate of Revenues

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Panama

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 19 June from the Chair of the Code of Conduct Group (Business Taxation), Panama was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁴⁴.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Panama with the set criteria.

We acknowledge that in your letter dated 7 July 2017 you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Panama will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

⁴⁴ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Panama in order to comply with the set criteria.

Criterion 2.1

In our letter dated 19 June 2017 we have informed Panama that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Panama. On the basis of such assessment, it has been found that the regimes named: Regional Headquarters Regime, Panama-Pacific Special Economic Area Regime, IP Regime - City of Knowledge, have been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Panama to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 19 June 2017 we have asked Panama to confirm whether the features of the preferential tax regime named Foreign Owned Call Centres as described in the letter were correct and complete. On the basis of the information available the experts continue to consider such regime as harmful. We invite Panama to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Panama to communicate the timeline for doing so. Please consider that the possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Peru Ministry of Economy and Finance:

[REDACTED]
Director General of Public Revenue Policy
[REDACTED]

[REDACTED]
Director of International Tax Affairs
[REDACTED]

Tax Agency of Peru – SUNAT:

[REDACTED]
Official
[REDACTED]

Mission of Peru to EU:

[REDACTED]
Second Secretary
[REDACTED]

Brussels, 23 October 2017

Dear Sir, Dear Madam,

By a letter dated 21 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Peru was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁴⁵.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Peru with the set criteria.

We acknowledge that in your letter dated 14 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Peru will address the deficiency listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of

⁴⁵ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Peru in order to comply with the set criteria.

Criterion 1.3

We acknowledge that in the reply sent on 14 July 2017 you confirmed that Peru has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Peru intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Peru to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to sign and ratify the aforementioned convention by end of 2019.

[REDACTED]
A/Director Tax Department
Ministry of Finance P. O. Box 28666
Doha - Qatar

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the State of Qatar

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Qatar was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁴⁶.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Qatar with the set criteria.

We acknowledge that in your letter dated 13 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Qatar will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

⁴⁶ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Qatar in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 13 July 2017, you confirmed that Qatar is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) but that the Multilateral Competent Authority Agreement was not signed. However, in the same reply, you have stated that you are considering signing the Multilateral Competent Authority Agreement. We invite Qatar to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

In the 13 July reply, you also confirmed that the primary/secondary legislation had not been enacted for implementing the standard in your domestic law. However, in the same reply, you have stated your intention to enact such legislation. We invite Qatar to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 13 July 2017, you confirmed that Qatar has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Qatar intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Qatar to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so.

Criterion 3

We acknowledge that in the reply sent on 13 July 2017, you confirmed that Qatar is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Qatar intends to join the Inclusive Framework and commit to the minimum standard. We invite Qatar to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.


Financial Secretary
Ministry of Finance
P.O. Box 186
Finance Building
Golden Rock
SAINT KITTS AND NEVIS W.I.

Brussels, 26 January 2018

Subject: Letter for the attention of the authorities of Saint Kitts and Nevis

- The EU list of non-cooperative jurisdictions for tax purposes

Dear Madam,

By a letter dated 7 November 2017 from the Chair of the Code of Conduct Group (Business Taxation), Saint Kitts and Nevis was informed on the outcome of the assessment made by the experts designated to verify the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures.

In the same letter, you were also informed that the Code of Conduct Group decided to put the EU listing process on hold for all jurisdictions that have been severely struck by the devastating storms of September 2017. The Council of the EU confirmed, in December 2017, that the listing process should be put on hold for these jurisdictions and instructed the Code of Conduct Group to pursue the contacts by February 2018 with the view to resolving the concerns by the end of 2018.

In reiterating our sympathy and support, we want to express our hope that Saint Kitts and Nevis be on its way towards full recovery from the injurious effects of the hurricanes and managed to rebuild its key infrastructures destroyed by the storms in September 2017.

Being faithful that Saint Kitts and Nevis successfully overcame the difficulties encountered because of the natural disasters, we are now contacting you with the aim of restarting the process. To that end, we would like to verify whether Saint Kitts and Nevis intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Saint Kitts and Nevis to cooperate with the Code of Conduct and commit, at a high political level, to addressing deficiencies listed in Annex I, which were already mentioned in Annex I of our letter of 7 November 2017. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified

jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 28 February 2018

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Saint Kitts and Nevis in order to comply with the set criteria.

Criterion 2.1

In our letter dated 8 June 2017 we have asked Saint Kitts and Nevis to confirm whether the features of the preferential tax regime named Offshore Companies as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite Saint Kitts and Nevis to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Saint Kitts and Nevis to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that Saint Kitts and Nevis is not a member of the Inclusive Framework on BEPS. Therefore, we invite Saint Kitts and Nevis to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so.

[REDACTED]
Chief Executive Officer
Ministry of Revenue

[REDACTED]
[REDACTED]
Chief Executive Officer
Samoa International Finance Authority

[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Independent State of Samoa
- Taxation: follow-up to the screening process

Dear Madam,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Samoa was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁴⁷.

Since you have not replied to the letter, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Samoa with the set criteria.

As a result, we would like to verify whether Samoa intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Samoa to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified

⁴⁷ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Samoa in order to comply with the set criteria.

Criterion 1.1

On the basis of the information available, the experts have concluded that Samoa is not compliant with the Automatic Exchange of Information standard (the CRS). Therefore, we invite Samoa to commit to the following and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so:

- Notify the OECD coordinating body with the list of all EU Member States with a view to activate the exchange of information with all of them.

Criterion 2.1

In our letter dated 8 June 2017 we have asked Samoa to confirm whether the features of the preferential tax regime named **Offshore Business** as described in the letter were correct and complete. Since you have not replied to the letter, the experts have based their assessment on publicly available information and continue to consider such regime as harmful. We invite Samoa to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Samoa to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that Samoa is not a member of the Inclusive Framework on BEPS. Therefore, we invite Samoa to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so.

San Marino Ministry of Finance

**Head of the Office of the Minister of
Finance**

**Department of Foreign Affairs
Directorate of European Affairs**

First Secretary

Brussels, 23 October 2017

Dear Madam, Dear Sir,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), San Marino was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁴⁸.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of San Marino with the set criteria.

We acknowledge that in your letter dated 26 June 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that San Marino will address the deficiency/deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

⁴⁸ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by San Marino in order to comply with the set criteria.

Criterion 2.1

In our letter dated 12 June 2017 we have informed San Marino that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of San Marino. On the basis of such assessment, it has been found that the regimes named *New companies regime* and *Regime for high-tech start-up companies* have been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite the San Marino to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

**Government of Serbia
Department for Fiscal System**



Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Serbia

- Taxation: follow-up to the screening process

Dear Sir, Dear Madam,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Serbia was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁴⁹.

Since you have not replied to the letter, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Serbia with the set criteria.

As a result, we would like to verify whether Serbia intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Serbia to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiency/deficiencies listed in Annex 1.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified

⁴⁹ The official publication of these Council Conclusions can be found in the Official Journal of the European Union: OJ C 461, 10.12.2016, page 2.

jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Serbia in order to comply with the set criteria.

Criterion 1.2 - NO Membership of GF

On the basis of the information available, the experts have verified that Serbia is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). Therefore, we invite Serbia to commit to join the Global Forum or to be assessed by the same and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 1.3 MAC to be signed

On the basis of the information available, the experts have concluded that Serbia has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended. Therefore, we invite Serbia to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

Criterion 3

On the basis of the information available, the experts have concluded that Serbia is not a member of the Inclusive Framework on BEPS. Therefore, we invite Serbia to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or to commit to the minimum standard and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

**Republic of Seychelles
Revenue Commissioner's Office**



Brussels, 23 October 2017

Dear Madam, Dear Sir,

By a letter dated 19 June from the Chair of the Code of Conduct Group (Business Taxation), Seychelles was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵⁰.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Seychelles with the set criteria.

We acknowledge that in your letter dated 6 July 2017 you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Seychelles will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

⁵⁰ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Seychelles in order to comply with the set criteria.

Criterion 2.1

In our letter dated 19 June 2017 we have informed Seychelles that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Seychelles. On the basis of such assessment, it has been found that the regimes named: *International Business Companies, Free zones, Offshore banks, Offshore insurance, Seychelles special license companies, Securities Business under the Securities act, Fund Administration Business* have been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Seychelles to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Government of Saint Lucia

Inland Revenue Department

[REDACTED]

Financial Services Regulatory Authority

[REDACTED]
[REDACTED]

Brussels, 30 October 2017

Subject: Letter for the attention of the authorities of Saint Lucia

- Taxation: follow-up to the screening process

Dear Madam, Dear Sir,

In the letter of 23 October 2017 from the Chair of the Code of Conduct Group (Business Taxation) certain deficiencies were identified in relation to the compliance of St Lucia with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures. Unfortunately, due to clerical mistakes, the deficiencies indicated in the Annex to that letter did not correspond to the assessment that had been carried out.

As a consequence we are sending a revised Annex which rectifies those mistakes in relation to the identified deficiencies, bearing in mind that the information contained in the letter itself remains valid. Please accept my sincere apologies for any inconvenience this may have caused.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by St Lucia in order to comply with the set criteria.

Criterion 2.1

In our letter dated 8 June 2017 we have asked St Lucia to confirm whether the features of the preferential tax regimes named **International Business Companies**, **International trusts** and **Free Trade Zones** as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite St Lucia to commit to amending or abolishing the above mentioned regimes, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite St Lucia to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that St Lucia is not a member of the Inclusive Framework on BEPS. Therefore, we invite St Lucia to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so.

Government of Saint Vincent and the Grenadines

Prime Minister and Minister of Finance
[REDACTED]

Financial Services Authority
[REDACTED]

Inland Revenue Department
[REDACTED]
[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of Saint Vincent and the Grenadines
- Taxation: follow-up to the screening process

Dear Sir, Dear Madam,

By a letter dated 8 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), St Vincent and the Grenadines was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵¹.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of St Vincent and the Grenadines with the set criteria.

We acknowledge that in your letters dated 26 June and on 15 September 2017 respectively, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that St Vincent and the Grenadines will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the

⁵¹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by St Vincent and the Grenadines in order to comply with the set criteria.

Criterion 2.1

In our letter dated 8 June 2017 we have asked St Vincent and the Grenadines to confirm whether the features of the preferential tax regimes named **International Business Companies and International Trusts** as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite St Vincent and the Grenadines to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite St Vincent and the Grenadines to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that in the reply sent on 15 September 2017, you confirmed that St Vincent and the Grenadines is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that St Vincent and the Grenadines intends to join the Inclusive Framework and commit to the minimum standards. We invite St Vincent and the Grenadines to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Kingdom of Swaziland
Diplomatic chancellery

[REDACTED]
Ambassador Extraordinary and
Plenipotentiary
Head of Mission

[REDACTED]
Deputy Head of Mission

Avenue Winston Churchill 188

1180 Bruxelles

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Kingdom of Swaziland

- Taxation: follow-up to the screening process

Your Excellency,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Swaziland was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵².

Since you have not replied to the letter, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Swaziland with the set criteria.

As a result, we would like to verify whether Swaziland intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Swaziland to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiency/deficiencies listed in Annex 1.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified

⁵² The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Swaziland in order to comply with the set criteria.

Criterion 1.2

On the basis of the information available, the experts have verified that Swaziland is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). Therefore, we invite Swaziland to commit to join the Global Forum or to be assessed by the same and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 1.3

On the basis of the information available, the experts have concluded that Swaziland has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended. Therefore, we invite Swaziland to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

Criterion 3

On the basis of the information available, the experts have verified that Swaziland is not a member of the Inclusive Framework on BEPS. Therefore, we invite Swaziland to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Swiss Federal Department of Finance
[REDACTED]
Ambassador, Head of Tax Division
Bundesgasse 3
3003 Bern
Switzerland

[REDACTED]
Mission of Switzerland to the EU
[REDACTED]
Counsellor financial, fiscal & monetary
affairs
[REDACTED]

Brussels, 26 October 2017

Subject: Letter for the attention of the authorities of the Swiss Confederation
- Taxation: follow-up to the screening process

Dear Sirs,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Switzerland was informed that the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵³, would take into account the ongoing bilateral dialogue with the Code Of Conduct Group and assessments by the FHTP.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. We acknowledge that in your reply to the questionnaire, dated 7 July 2017, and through your ongoing engagement with the Code of Conduct Group, you have shown a willingness to cooperate with the Group on international tax issues. We also note your appearance at the Code of Conduct Group meeting of 8 June 2017 where you gave a presentation on the progress of your tax reform efforts to date and underlined your commitment to abolishing the harmful tax regimes.

On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects and have determined that Switzerland is compliant with the screening criteria on tax transparency and implementation of anti-BEPS measures used by the EU and is committed to addressing the deficiencies identified in the 2014 Joint Statement. As such, the Code of Conduct Group will not recommend to the Council of the EU to include Switzerland in the list of non-cooperative jurisdictions for tax purposes at the end of this year.

⁵³ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

However, we expect that Switzerland will continue its efforts to implement the 2014 EU-Swiss Joint Statement.

The Code of Conduct Group will continue monitoring the developments to ensure that the screening criteria continue to be met and, as the case may be, might recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We are looking forward to continue our fruitful cooperation on tax matters.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

[REDACTED]
Deputy Director-General
Taxation Administration
Ministry of Finance

[REDACTED]
Section Chief
Taxation Administration
Ministry of Finance

[REDACTED]
Director
Second Bilateral Trade Division Bureau
of Foreign Trade
Ministry of Economic Affairs

[REDACTED]
Deputy Counselor on Home Assignment
Department of European Affairs
Ministry of Foreign Affairs

[REDACTED]
Section Chief
Department of European Affairs
Ministry of Foreign Affairs

[REDACTED]
Economic Secretary
Economic Division
Taipei Representative Office in the
European Union and Belgium

Brussels, 24 October 2017

Subject: Letter for the attention of the authorities of Taiwan

- Taxation: follow-up to the screening process

Dear Sir, Dear Madam,

By a letter dated 24 July 2017 from the Chair of the Code of Conduct Group (Business Taxation), Taiwan was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the

establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵⁴.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, and taking into account the specific situation of Taiwan in the area of international taxation, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Taiwan with the set criteria.

We acknowledge that in your letter dated 17 August 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would need a firm commitment at a high political level that Taiwan will address the deficiencies listed in Annex I to this letter. Such a commitment would allow the Code of Conduct Group to take into consideration future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

⁵⁴ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Taiwan in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 17 August 2017, you confirmed that Taiwan is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) on the basis of the bilateral approach through Agreements for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income. However, in the same reply, you have stated that the network of agreements in place does not cover all the EU Member States but that you intend to extend such a network. We invite Taiwan to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 17 August 2017, you confirmed that Taiwan has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Taiwan is prepared to establish a network of exchange arrangements which is sufficiently broad to cover all Member States, effectively allowing both EOIR and AEOI. We invite Taiwan to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 24 July 2017 we have asked Taiwan to confirm whether the features of the preferential tax regime named Taiwan Free Trade Zone as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite Taiwan to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Taiwan to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that in the reply sent on 17 August 2017, you confirmed that Taiwan is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that despite not being a member of the Inclusive Framework Taiwan intends to actively carry out BEPS minimum standards by undertaking consistent implementations as commitment to the agreed BEPS minimum standards and commit to the minimum standard. We invite Taiwan to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
Director-General
The Revenue Department
90 Soi Phaholyothin 7
Phaholyothin Road
Bangkok 10400
[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Kingdom of Thailand
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Thailand was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵⁵.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Thailand with the set criteria.

We acknowledge that in your letter dated 30 June 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Thailand will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified

⁵⁵ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Thailand in order to comply with the set criteria.

Criterion 1.3

We acknowledge that in the reply sent on 30 June 2017, you confirmed that Thailand has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Thailand intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Thailand to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to sign and ratify the aforementioned convention by the end of 2019.

Criterion 2.1

In our letter dated 12 June 2017 we have informed Thailand that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating its preferential tax regimes. On the basis of such assessment, it has been found that the regimes named International Headquarters, International Trading Centre, Regional Operation Headquarters and Treasury Centre have been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Thailand to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
Permanent Secretary
Ministry of Finance
Trinidad and Tobago
[REDACTED]

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Trinidad and Tobago
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 14 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Trinidad and Tobago was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵⁶.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Trinidad and Tobago with the set criteria.

We acknowledge that in your letter dated 28 July 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Trinidad and Tobago will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

⁵⁶ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Trinidad and Tobago in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 28 July 2017, you confirmed that Trinidad and Tobago was not applying the OECD Automatic Exchange of Information standard (the Common Reporting Standard) and that the Multilateral Competent Authority Agreement was not signed. However, in the same reply, you have stated that are considering committing to the relevant standard and signing the Multilateral Competent Authority Agreement. We invite Trinidad and Tobago to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.2

We acknowledge that Trinidad and Tobago has been attributed a rating by the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum) that is not in line with the international standards applied by the experts. We invite Trinidad and Tobago to confirm this commitment to address the deficiencies identified by the Global Forum in order to obtain a rating at least equivalent to 'largely compliant', under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 28 July 2017, you confirmed that Trinidad and Tobago has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended. However, in the same reply, you confirmed that Trinidad and Tobago intends to sign and consequently ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite Trinidad and Tobago to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 28 July 2017 we have informed Trinidad and Tobago that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating its preferential tax regime. On the basis of such assessment, it has been found that the regime named Free Zones has been considered in the process of being eliminated by the Forum on Harmful Tax Practices. For this reason, we invite Trinidad and Tobago to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 3

We acknowledge that in the reply sent on 28 July 2017, you confirmed that Trinidad and Tobago is not a member of the Inclusive Framework on BEPS. However, in the same reply, you confirmed that Trinidad and Tobago intends to join the Inclusive Framework and commit to the minimum standards. We invite Trinidad and Tobago to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Republic of Tunisia
Diplomatic chancellery
Avenue de Tervuren 278
1150 Bruxelles


Ambassador Extraordinary and Plenipotentiary

Head of the Representation (EU)

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the Republic of Tunisia

- Taxation: follow-up to the screening process

Your Excellency,

By a letter dated 12 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Tunisia was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵⁷.

Since you have not replied to the letter containing a questionnaire, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Tunisia with the set criteria.

As a result, we would like to verify whether Tunisia intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Tunisia to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiency/deficiencies listed in Annex 1.

Such a formal commitment made at a high political level should include a description of the steps that Tunisia will undertake to correct the identified deficiencies and should provide a precise timeline for the implementation of the changes, considering that the deadline for implementing those changes and being in full compliance with the set criteria is 31 December 2018.

Should the commitments made by Tunisia satisfy the conditions, the Code of Conduct Group will not recommend to the Council of the EU to include Tunisia in the list of non-cooperative jurisdictions for tax purposes.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend

⁵⁷ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Tunisia in order to comply with the set criteria.

Criterion 2.1

In our letter dated 12 June 2017 we have asked Tunisia to confirm whether the features of the preferential tax regimes named Export Promotion Incentives and Offshore Financial Services as described in the letter were correct and complete. In the absence of a substantial reply the experts continue to consider such regime as harmful. We invite Tunisia to commit to amending or abolishing the above mentioned regimes, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite Tunisia to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that Tunisia is not a member of the Inclusive Framework on BEPS. Therefore, we invite Tunisia to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Permanent Delegation of Turkey to the EU

Avenue des Arts 36-38
1040 Bruxelles

[REDACTED]
Ambassador Extraordinary and
Plenipotentiary
Head of Mission

[REDACTED]
Minister plenipotentiary
Chargé d'affaires

[REDACTED]
Counsellor

[REDACTED]
Brussels, 26 October 2017

Subject: Letter for the attention of the authorities of the Republic of Turkey

- Taxation: follow-up to the screening process

Your Excellency,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Turkey was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁵⁸.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Turkey with the set criteria.

We acknowledge that in your email dated 29 September 2017 you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Turkey will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct

⁵⁸ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below. The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Turkey in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 29 September 2017 you confirmed that Turkey is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) and that the Multilateral Competent Authority Agreement has been signed but you also confirmed that the OECD Coordinating body has not been notified of the intention to exchange information with all EU Member States. However, in the same reply, you have stated your intention to meet the standard for criterion 1.1. We invite Turkey to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address this deficiency by end of 2019.

Criterion 1.2

We acknowledge that in the reply sent on 29 September 2017 you confirmed that Turkey has been attributed a rating by the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum) that is not in line with the international standards applied by the experts. However, in the same reply, you confirmed that Turkey intends to address the deficiencies identified by the Global Forum in order to obtain a rating at least equivalent to 'largely compliant'. We invite Turkey to confirm this commitment, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address the deficiencies by end of 2019.

Criterion 1.3

On the basis of the information available, the experts have concluded that Turkey participates in the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, although the ratification instrument has not yet been deposited by the relevant Country. Therefore, we invite Turkey to commit, under the procedure specified in the letter to which this annex is attached, to ratify the MAC as amended, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by end of 2019.

Criterion 2.1

In our letter dated 19 June 2017 we have informed Turkey that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Turkey. On the basis of such assessment, it has been found that the regime named *Technology Development Zones* has been considered potentially harmful by the Forum on Harmful Tax Practices. For this reason, we invite Turkey to commit to amend or abolish the above mentioned regime in order to comply with the criteria applied by the Forum on Harmful Tax Practices and the Code of Conduct Group, and to communicate the timeline for doing so.

Concerning the regime *Regional Headquarters*, since it has been assessed as out of scope by the Forum on Harmful Tax Practices, the experts have assessed the regime against the criteria set by the Code of Conduct Group. On the basis of the information available the experts have found that the regime is harmful. We invite Turkey to commit, under the procedure specified in the letter to which this annex is attached, to amending or abolishing the above mentioned regime in order to comply with the criteria applied by the Forum on Harmful Tax Practices and the Code of Conduct Group or give evidence of the fact that the regime is not actually harmful. We invite Turkey to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

[REDACTED]
Director, Exchange of Information Unit
Ministry of Finance, Trade & Investment
Wilma House, Hibiscus Square
Grand Turk
TURKS AND CAICOS

Brussels, 26 January 2018

Subject: Letter for the attention of the authorities of Turks and Caicos

- The EU list of non-cooperative jurisdictions for tax purposes

Dear Sir,

By a letter dated 13 November 2017 from the Chair of the Code of Conduct Group (Business Taxation), Turks and Caicos was asked to respond to a number of questions from the experts designated to verify the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures.

In the same letter, you were also informed that the Code of Conduct Group had decided to put the EU listing process on hold for all jurisdictions that have been severely struck by devastating storms of September 2017. The Council of the EU confirmed in December 2017 that the listing process should be put on hold for these jurisdictions and instructed the Code of Conduct Group to pursue the contacts by February 2018 with the view to resolving the concerns by the end of 2018.

In reiterating our sympathy and support, we want to express our hope that Turks and Caicos be on its way towards full recovery from the injurious effects of the hurricanes and managed to rebuild its key infrastructures destroyed by the storms in September 2017.

Being faithful that Turks and Caicos successfully overcame the difficulties encountered because of the natural disasters, we are now contacting you with the aim of restarting the process. To that end, we would like to reiterate the invitation contained in the letter dated 13 November 2017 to respond to a number of questions concerning Turks and Caicos' tax system. For ease of reference the questions are again included in the annexes to this letter.

We would be grateful for your response to reach us by 28 February 2018.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
tel. +32 (0)2 281 72 75

Criterion 2.2

"2.2. The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction."⁵⁹

Scope of criterion 2.2

1. For the purposes of application of criterion 2.2, the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero by a jurisdiction should be regarded as within the scope of Paragraph A of the Code of Conduct for Business Taxation of 1 December 1997 (Code of Conduct).⁶⁰
2. In this respect, where criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct ⁶¹, because of the "absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero"⁶², then the five factors identified in paragraph B of the Code of Conduct should be applied by analogy to assess whether the criterion 2.2⁶³ has been met.
3. In the context of criterion 2.2 the fact of absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero cannot alone be a reason for concluding that a jurisdiction does not meet the requirements of criterion 2.2.
4. A jurisdiction should be deemed as non-compliant with criterion 2.2 if it refuses to engage in a meaningful dialogue or does not provide the information or explanations that the Code of Conduct Group may reasonably require or otherwise does not cooperate with the Code of Conduct Group where it needs to ascertain compliance of that jurisdiction with criterion 2.2 in the conduct of the screening process.

⁵⁹ Scope of criterion 2.2 is set out in Appendix 2 to this Annex (here as Annex II).

⁶⁰ "Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community." (OJ C 2, 06.01.1998, p. 3)

⁶¹ "Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor." (OJ C 2, 06.01.1998, p. 3)

⁶² This may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

⁶³ Criterion 2.2 reads as follows: *"The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction."*

QUESTIONS CONCERNING CRITERION 2.2**General remarks:**

Please provide details of all the pieces of legislation or administrative practices you are referring to in your answers to this questionnaire (when possible, links to official websites). Please also get in touch as soon as practicable if there are any questions you wish to clarify or are likely to have difficulties in responding to. We would be happy to receive responses to individual questions, before the deadline for overall completion, if they are available beforehand.

Part I - General questions

The following questions are aimed at collecting information for the purpose of having an overview of your economy and of the tax system in your jurisdiction, including information not directly linked to corporate taxation but which might nonetheless be useful for the purpose of reaching a general understanding of the legal and regulatory framework for doing business in your country.

- 1.1. Could you please provide the following general information on your jurisdiction, possibly covering the last 3 years:
- (a) resident population;
 - (b) main sectors of your economy;
 - (c) GDP;
 - (d) number of registered legal entities (broken down by main business sectors);
 - (e) number of registered and/or resident legal entities that are controlled by non-resident legal entities or individuals. Control in this context means that non-resident legal entities or individuals altogether hold more than 50% of capital/shares or voting rights or rights to distribution of profits;
 - (f) number of financial institutions as defined under the Common Reporting Standard operating in your jurisdiction;
 - (g) number of employees (broken down by main business sectors); please count only one time if he or she works for more than one company.

- 1.2. Does your jurisdiction impose a corporate income tax (CIT) on entities resident for tax purposes and/or operating in your jurisdiction?
- (a) If yes, could you please provide a general description of the main features of your CIT system (in particular personal and material scope of application; main features of calculating the tax base; tax rates).
- (b) If not, could you please provide an explanation of the reasons why you refrain from introducing a CIT system? Is there any other form of taxation, levy or charge on business activities applicable to entities resident and/or operating in your country? If yes, please describe.
- 1.3. Is there an obligation for companies to file a tax return in your jurisdiction? If yes, which information is required in the tax return?
- 1.4. Could you please provide a general description of the main features of the regulatory framework for doing business in your jurisdiction including your company and accounting law? Is your accounting law based on International Accounting Standards?
- 1.5. Do you require companies undertaking business or registered in your jurisdiction to file annual financial statements and/or keep internal accounting records for general purposes? If so, are there exemptions from the above mentioned obligation? If yes, how many companies are exempted and under which conditions?
- 1.6. Do you have a company register in place? If yes, please describe the main features of your company register (e.g. registration process, availability of information for the authorities and/or the public). If not: Please provide an explanation why you do not have a company register in place.
- 1.7. Does your legislation require that a company's ultimate beneficial owner(s) is/are known to the authorities, including tax authorities? If yes, please explain and provide the relevant legislation.
- 1.8. Which are the main procedures for setting up a company in your jurisdiction? Please describe the different compulsory steps specifying whether they can also be fulfilled online.
- 1.9. Do you apply any form of supervision on service providers who assist with the setting up of a company in your jurisdiction? For example, are the service providers required to collect and to keep information with respect to economic substance (e.g. employees, physical office, assets, investments etc.) to be undertaken in your territory? If yes, please explain.

Part II - Specific questions

- 2.1. Are there any restrictions on business activities which can be carried out in your jurisdiction? If so, what restrictions apply and which of these restrictions apply to domestic and which of them apply to non-resident businesses?
- 2.2. Besides tax law legislation, is there any other legislation (for instance civil law) applicable that restricts residents from establishing certain companies or that treats non-residents more favorably (for instance by imposing lighter administrative requirements)?
- 2.3. Are foreign corporations registered in the jurisdiction restricted from using local currency?
- 2.4. Does your law provide for any economic substance requirements which a company should meet to be established and allowed to do business in your jurisdiction? For instance: minimum level of employees, minimum level of annual expenditure to be incurred; physical offices and premises, investments or specific types of activities to be undertaken in your jurisdiction etc. If yes, please explain.
- 2.5. How many tax inspectors are working in the field of CIT?
- 2.6. Are governmental authorities, including tax authorities, entitled to investigate the economic substance necessary to carry out real economic activities of an incorporated company registered or operating in your jurisdiction? Are regular tax audits conducted on the companies located in your jurisdiction to assess the compliance with economic substance requirements? If yes, please explain.
- 2.7. In case the authorities would conclude that a company would have no sufficient level of economic substance in that jurisdiction, what would be the consequence? Are there any penalties applied? Would the authority inform tax authorities of other countries where related companies are resident?
- 2.8. Are there provisions in force in your jurisdiction that introduce international standards enforcing rules on substantial activity requirements (such as G20/OECD BEPS Action 5 with regard to Intellectual Property regimes)? If yes, please indicate those provisions.
- 2.9. Do you apply transfer pricing (TP) rules according to the OECD guidelines?
 - (a) If yes, has your jurisdiction implemented legislation on TP guidelines in compliance with the OECD guidelines and are these embedded in your national legislation? Could you please provide how taxpayers are required to comply with these guidelines?
 - (b) If not, do you apply any other equivalent international valuation standards for accounting purposes such as the "fair value" as defined under the International Financial Reporting Standards?

- 2.10. Which other rules for profit determination in respect of activities within a multinational group of companies do you apply? Please describe how these rules are applied.
- 2.11. Does the revenue service or any other authority have TP experts to ascertain that the profit allocation remains within the TP risk margins? Do you provide for advance pricing agreements or other form of preliminary agreement with the tax authority for the purpose of determining prices of intra-group transactions or attribution of profits to permanent establishments of foreign entities?
- 2.12. Are entities established in your jurisdiction subject to TP documentation requirements including CBCR? If yes, do you provide for any form of notification by entities belonging to MNEs for CBCR purposes? Are there any impediments in your legislation which restrict the ability of a company to provide information to the relevant mother company for the purpose of TP documentation (including CBCR)?
- 2.13. Are there any elements of the legal system, including the granting of tax residence or the setting up of companies, which can be regulated on the basis of an advance ruling or any other form of preliminary dialogue with the relevant authorities?
- If yes, please provide the legal or regulatory provisions regarding those elements; if yes but general rules are not available, please explain why.
- 2.14. Are the authorities in your jurisdiction entitled to provide taxpayers with any discretionary decision regarding the application of specific preferential regimes or general rules applicable to the setting up of a company?
- 2.15. Are the requirements for the incorporation of a company in your jurisdiction and relevant laws and regulations on CIT publically available? If yes, please specify the source and provide us with relevant legislation (in English).
- 2.16. Does your administration grant any type of ruling which should be exchanged under transparency framework laid down in the final G20/OECD BEPS Action 5 Report (compulsory spontaneous exchange of tax rulings)⁶⁴?

⁶⁴ Cfr. Para 91 of the Report, where the following ruling are listed: *i) rulings relating to preferential regimes; (ii) unilateral APAs or other cross-border unilateral rulings in respect of transfer pricing; (iii) cross-border rulings providing for a downward adjustment of taxable profits; (iv) permanent establishment (PE) rulings; (v) related party conduit rulings. and (vi) any other type of ruling agreed by the FHTP that in the absence of spontaneous information exchange gives rise to BEPS concerns.*

[REDACTED]
Premier
Hon. N.J.S. Francis Building
Grand Turk
TURKS AND CAICOS

Brussels, 6 March 2018

Subject: The EU list of non-cooperative jurisdictions for tax purposes

- Follow-up to the screening process, criterion 2.2

Your Excellency,

We would like to thank you for your response to the questionnaire on criterion 2.2 of the EU listing criteria. We would also like to thank you for the information provided in previous exchanges. On the basis of your explanations and publicly available information, the Code of Conduct Group (Business Taxation) has been able to clarify certain aspects but has also identified some concerns as regards the compliance of your legal and regulatory framework with this criterion, as further clarified below.

This criterion has been agreed by the EU Finance Ministers in November 2016⁶⁵ and its scope has been further defined by the same Ministers in February 2017 (scope of criterion 2.2). In addition, the Code of Conduct Group (Business Taxation) last year agreed detailed Terms of Reference for its application. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the above-mentioned scope of criterion 2.2.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2. In light of this, the Code of Conduct Group has provisionally considered the tax system of the Turks and Caicos Islands as harmful.

In addition, the same technical analysis revealed that, in your jurisdiction, legal mechanisms exist that enable the granting of advantages only to non-residents or in respect of transactions carried out with non-residents, in particular, through the incorporation of entities which are not permitted to carry on business in your jurisdiction.

As a result of this, we would like to take this opportunity to verify whether the Turks and Caicos Islands intends to address the identified concerns and commit to future changes.

We invite the Turks and Caicos Islands to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the

⁶⁵ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

issues that arise in connection with entities operating without any substance, the Turks and Caicos Islands is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. The Turks and Caicos Islands is asked to discuss with the Code of Conduct Group what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include the Turks and Caicos Islands in the list of non-cooperative jurisdictions for tax purposes if you will commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 31 March 2018.

Sincerely,

Fabrizia Lapecorella



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Scope of criterion 2.2

1. For the purposes of application of criterion 2.2, the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero by a jurisdiction should be regarded as within the scope of Paragraph A of the Code of Conduct for Business Taxation of 1 December 1997 (Code of Conduct).⁶⁶
2. In this respect, where criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct ⁶⁷, because of the "absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero"⁶⁸, then the five factors identified in paragraph B of the Code of Conduct should be applied by analogy to assess whether the criterion 2.2⁶⁹ has been met.
3. In the context of criterion 2.2 the fact of absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero can not alone be a reason for concluding that a jurisdiction does not meet the requirements of criterion 2.2.
4. A jurisdiction should be deemed as non-compliant with criterion 2.2 if it refuses to engage in a meaningful dialogue or does not provide the information or explanations that the Code of Conduct Group may reasonably require or otherwise does not cooperate with the Code of Conduct Group where it needs to ascertain compliance of that jurisdiction with criterion 2.2 in the conduct of the screening process.

⁶⁶ "Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community." (OJ C 2, 06.01.1998, p. 3)

⁶⁷ "Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor." (OJ C 2, 06.01.1998, p. 3)

⁶⁸ This may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

⁶⁹ Criterion 2.2 reads as follows: *"The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction."*

Terms of reference for the application of the Code test by analogy

A. General framework

1. Criterion from ECOFIN Council Conclusion on 8th November 2016

The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.

2. Scope of Criterion 2.2 (ECOFIN February 2017)

1. *For the purposes of application of criterion 2.2, the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero by a jurisdiction should be regarded as within the scope of Paragraph A of the Code of Conduct for Business Taxation of 1 December 1997 (Code of Conduct).⁷⁰*

2. *In this respect, where criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct⁷¹, because of the "absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero"⁷², then the five factors identified in paragraph B of the Code of Conduct should be applied by analogy to assess whether the criterion 2.2⁷³ has been met.*

3. *In the context of criterion 2.2 the fact of absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero cannot alone be a reason for concluding that a jurisdiction does not meet the requirements of criterion 2.2.*

4. *A jurisdiction should be deemed as non-compliant with criterion 2.2 if it refuses to engage in a meaningful dialogue or does not provide the information or explanations that the Code of Conduct Group may reasonably require or otherwise does not cooperate with the Code of Conduct Group where it needs to ascertain compliance of that jurisdiction with criterion 2.2 in the conduct of the screening process.*

⁷⁰ *"Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community." (OJ C 2, 06.01.1998, p. 3)*

⁷¹ *"Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor." (OJ C 2, 06.01.1998, p. 3)*

⁷² *This may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.*

⁷³ *Criterion 2.2 reads as follows: "The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction."*

3. General remarks

- Scope of Criterion 2.2 as defined by ECOFIN considers the absence of a corporate tax rate or a nominal tax rate equal to zero or almost zero in a jurisdiction as a "measure" significantly affecting the location of business activities (Paragraph A of the Code of Conduct).
- To this extent, Criterion 2.2 is aimed at verifying whether this "measure" facilitates offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.
- Criterion 2.2 applies only when the standard code assessment (i.e. criterion 2.1) cannot be applied because of the absence in a third country jurisdiction of a corporate tax system or because the jurisdiction applies a nominal corporate tax rate equal to zero or almost zero.
- Criterion 2.2 assesses the legal framework and certain economic evidences of a jurisdiction with regard to the five criteria established under paragraph B of the Code of Conduct to be interpreted by analogy.
- Advantages granted by a third country jurisdictions influencing in a significant way the location of business activities have to be seen in connection with a nominal corporate tax rate equal to zero or almost zero as well as in connection with the absence of corporate taxation, to the extent in both cases the standard Code of Conduct test could not be applied. These latter features have in fact to be considered *per se* as advantages to be assessed under this code test.
- In general terms, any guidance developed by the COCG over the years for assessing tax measures within the scope of the 1998 Code of Conduct should be applied consistently and by analogy for the purpose of this test⁷⁴.
- A jurisdiction can only be deemed to have failed the assessment under this criterion when 'offshore structures and arrangements attracting profits which do not reflect real economic activity in the jurisdiction' are due to rules or practices, including outside the taxation area, which a jurisdiction can reasonably be asked to amend, or are due to a lack of those rules and requirements needed to be compliant with this test that a jurisdiction can reasonably be asked to introduce.
- The introduction of a CIT system or a positive CIT rate is not amongst the actions that a third country jurisdiction can be asked to take in order to be in line with the requirements under this test, since the absence of a corporate tax base or a zero or almost zero level tax rate cannot by itself be deemed as criterion for evaluating a jurisdiction as non-compliant.
- Nonetheless, criterion 2.2 implies automatic non-compliance for those jurisdictions that refuse to cooperate with the EU for the assessment of their legal framework.

⁷⁴ See doc. 14039/98 of 11 December 1998 "Code of Conduct (Business Taxation) – Interpretation of Criteria" and its further updates.

B. Gateway test

1. Gateway criterion as it reads now in the Code of Conduct

"Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this Code."

2. Guidelines for application by analogy

- The functioning of the Gateway test seems rather clear from the definition of scope of Criterion 2.2 as agreed by Ecofin in February this year.
- In particular, this test is satisfied when *"criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct, because of the "absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero"*

C. Criteria 1 and 2

1. Criterion 1 of the current Code Criteria as it is now

"Whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents"

2. Criterion 2 of the current Code Criteria as it is now

"Whether advantages are ring-fenced from domestic market, so they do not affect the national tax base"

3. Guidelines for application by analogy

- For the purpose of applying criterion 2.2., "advantages" should be understood as the existence of zero or almost zero taxation or the absence of CIT.
- Factor 1 as well as factor 2 of the current code criteria contain two main elements: (a) legal ring-fencing and (b) de-facto ring-fencing.
- De jure ring-fencing occurs when advantages are only granted to non-residents by the laws and regulations governing the establishment and operations of businesses in a given jurisdiction.
- Where there is no an effective CIT-system in place, it should be then assessed whether aspects of the legal framework, including non-CIT aspects, effectively provide for a ring-fenced scenario.

- An example of that would be non-tax requirements for companies to allow for the residence or for the access to the domestic market of the tested jurisdiction.
- For this purpose, any measure leading to a different treatment between domestic companies and companies held by non-residents or whose activities are disconnected from the domestic market shall be assessed.
- If for instance a jurisdiction grants "advantages" to a company only if it abstains from activities in the local economy (criterion 2) or only to the extent such activities are dependent on a specific business license (criterion 1 and 2) or only to the extent the activities are undertaken by non-residents (criterion 1), this could be assessed as a possible feature of a ring fencing system in place. By analogy this could also be relevant for other taxes (i.e. other than CIT).
- De-facto ring-fencing usually refers to a situation whereby the advantage is not explicitly granted by a country only to non-residents although, in fact, it is enjoyed only or almost only by non-residents.
- As to the de-facto ring-fencing, it is usually considered how many of the taxpayers benefitting from the advantage are in fact non-residents. If, for instance all or nearly all of the subjects benefitting from zero taxation are non-residents (including domestic companies with foreign shareholding), sub-criteria 1 (b) as well as 2 (b) would be considered as met (i.e. the jurisdiction would be deemed to be non-compliant under this step of the Code test).

D. Criterion 3

1. Criterion 3 of the current Code Criteria as it is now

"Whether advantages are granted even without any real economic activity and substantial economic presence with the Member State offering such tax advantages"

2. Guidelines for application by analogy

In order to evaluate whether advantages are granted even without any real economic activity and substantial economic presence, it has to be ascertained:

- whether a jurisdiction does require a company or any other undertaking (e.g. for its incorporation and/or its operations) the carrying out of real economic activities and a substantial economic presence:
 - "Real economic activity" relates to the nature of the activity that benefits from the non-taxation at issue.
 - "Substantial economic presence" relates to the factual manifestations of the activity that benefits from the non-taxation at issue.

- By way of example and under the assumption that, in general, elements considered in the past by the COCG are relevant also for this analysis, the current assessment should consider the following elements taking into account the features of the industry/sector in question: adequate level of employees, adequate level of annual expenditure to be incurred; physical offices and premises, investments or relevant types of activities to be undertaken.
- whether there is an adequate de jure and de facto link between real economic activity carried on in the jurisdiction and the profits which are not subject to taxation;
- whether governmental authorities, including tax authorities of a jurisdiction, are capable of (and are actually doing) investigations on the carrying out of real economic activities and a substantial economic presence on its territory, and exchanges of relevant information with other tax authorities;
- whether there are any sanctions for failing to meet substantial activities requirements.

E. Criterion 4

1. Criterion 4 of the current Code Criteria as it is now

“Whether the rules for profit determination in respect of activities within a multinational group of companies depart from internationally accepted principles, notably the rules agreed upon within the OECD”

2. Guidelines for application by analogy

- In assessing the adherence of profit determination rules to internationally agreed standards (e.g. OECD TP Guidelines or other similar accounting standards) first of all it should be verified if and to what extent this analysis is relevant for jurisdictions not applying a CIT system.
- To this aim it seems relevant to consider that a jurisdiction not applying a CIT system should not negatively affect a proper allocation of profits departing from internationally agreed standards. Jurisdictions should take appropriate steps in ensuring taxing countries are able to exercise their taxing rights i.e. via CBCR, transparency and other modes of information sharing.
- Where relevant, it should be ascertained if OECD’s agreed principles or similar accounting standards for the determination of profits have been endorsed in a given jurisdiction.
- To this regard, it is critical to ascertain how these rules are implemented and consolidated in the jurisdictions concerned. In the absence of corporate income taxation in a given jurisdiction, also alternative transfer pricing rules can be taken into account, verifying whether they are comparable and compatible with internationally agreed principles (for instance a fair market value approach under international accounting principles).

- This Criterion shall prevent from allowing multinational companies to use transfer pricing rules departing from the OECD Transfer Pricing Guidelines in order to allocate their profits to zero tax jurisdictions.
- Answers to questions from 2.9 to 2. 12 should give sufficient information on how profits are determined highlighting any important department from internationally agreed standards.

F. Criterion 5

1. Criterion 5 of the current Code Criteria as it is now

"Whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way"

2. Guidelines for application by analogy

- Criterion 5 shall evaluate whether certain features of a legal system, including the establishment of a business on its territory, lack sufficient level of transparency.
- More specifically, it has to be assessed whether any elements of the legal system, including the granting of tax residence or the setting up of companies can be granted on a discretionary basis or whether it is bound by the law, verifying whether any legal provision, including non-tax provisions, can be deemed to be discretionary in matters related to the setting up of a company in that jurisdiction.
- This factor shall prevent a jurisdiction from having an insufficient level of transparency within its regulatory framework, considering that advantages as considered in this Code test stem from the registration of a company in a jurisdiction.
- Answers to questions from 2.13 to 2. 16 should give sufficient information on how transparency is ensured in a jurisdiction on certain steps to be undertaken by companies in order to benefit from the advantages provided therein.


Undersecretary
Ministry of Finance
Abu Dhabi P. O. Box 433
United Arab Emirates

Brussels, 23 October 2017

Subject: Letter for the attention of the authorities of the United Arab Emirates
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 14 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), the United Arab Emirates was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁷⁵.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of the United Arab Emirates with the set criteria.

We acknowledge that in your letter dated 6 September 2017, you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that United Arab Emirates will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

⁷⁵ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by the United Arab Emirates in order to comply with the set criteria.

Criterion 1.1

We acknowledge that in the reply sent on 6 September 2017, you confirmed that the United Arab Emirates is committed to the OECD Automatic Exchange of Information standard (the Common Reporting Standard) and that the Multilateral Competent Authority Agreement has been signed. Experts have verified that in the notification of the activation of the MCAA has not been made with all EU Member States. We invite the United Arab Emirates to confirm its commitment to cover all EU Member states for the purpose of the Automatic Exchange of Information, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

Criterion 1.3

We acknowledge that in the reply sent on 6 September 2017, you confirmed that the United Arab Emirates has signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, although the ratification instrument has not been deposited yet. However, in the same reply, you confirmed that the United Arab Emirates intends to ratify the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We invite the United Arab Emirates to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 14 June 2017 we have asked the United Arab Emirates to confirm whether the features of the preferential tax regime named Free Zones as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite the United Arab Emirates to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite the United Arab Emirates to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

We acknowledge that the reply sent on 6 September 2017 confirms that the United Arab Emirates is not a member of the Inclusive Framework on BEPS. We invite the United Arab Emirates to commit to joining the Inclusive Framework on BEPS, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
Undersecretary
Ministry of Finance
P. O. Box 433
Abu Dhabi
UNITED ARAB EMIRATES

Brussels, 20 February 2018

Subject: The EU list of non-cooperative jurisdictions for tax purposes

- Follow-up to the screening process, criterion 2.2

Your Excellency,

We would like to thank you for your letter of 16 January 2018 and your response to the questionnaire on criterion 2.2 of the EU listing criteria. We would also like to thank you for the additional elements provided in subsequent exchanges. On the basis of your explanations and publicly available information, the Code of Conduct Group (Business Taxation) has been able to clarify certain aspects but has also identified some concerns as regards the compliance of your legal and regulatory framework with this criterion, as further clarified below.

This criterion has been agreed by the EU Finance Ministers in November 2016⁷⁶ and its scope has been further defined by the same Ministers in February 2017 (scope of criterion 2.2). In addition, the Code of Conduct Group (Business Taxation) last year agreed detailed Terms of Reference for its application. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been taken into account, in accordance with the above-mentioned scope of criterion 2.2.

Following a technical analysis the main concern relates to the lack of substance requirements for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2. In light of this, the Code of Conduct Group has provisionally considered the tax system of the United Arab Emirates as harmful.

As a result of this, we would like to take this opportunity to verify whether the United Arab Emirates intends to address the identified concerns and commit to future changes.

We invite the United Arab Emirates to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, the United Arab Emirates is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. The United Arab Emirates is asked to discuss with the Code of

⁷⁶ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Conduct Group what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include the United Arab Emirates in the list of non-cooperative jurisdictions for tax purposes if you will commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 23 March 2018.

Sincerely,

Fabrizia Lapecorella



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Scope of criterion 2.2

1. For the purposes of application of criterion 2.2, the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero by a jurisdiction should be regarded as within the scope of Paragraph A of the Code of Conduct for Business Taxation of 1 December 1997 (Code of Conduct).⁷⁷
2. In this respect, where criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct ⁷⁸, because of the "absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero"⁷⁹, then the five factors identified in paragraph B of the Code of Conduct should be applied by analogy to assess whether the criterion 2.2⁸⁰ has been met.
3. In the context of criterion 2.2 the fact of absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero can not alone be a reason for concluding that a jurisdiction does not meet the requirements of criterion 2.2.
4. A jurisdiction should be deemed as non-compliant with criterion 2.2 if it refuses to engage in a meaningful dialogue or does not provide the information or explanations that the Code of Conduct Group may reasonably require or otherwise does not cooperate with the Code of Conduct Group where it needs to ascertain compliance of that jurisdiction with criterion 2.2 in the conduct of the screening process.

⁷⁷ "Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community." (OJ C 2, 06.01.1998, p. 3)

⁷⁸ "Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor." (OJ C 2, 06.01.1998, p. 3)

⁷⁹ This may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

⁸⁰ Criterion 2.2 reads as follows: *"The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction."*

Terms of reference for the application of the Code test by analogy

A. General framework

4. Criterion from ECOFIN Council Conclusion on 8th November 2016

The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.

5. Scope of Criterion 2.2 (ECOFIN February 2017)

1. *For the purposes of application of criterion 2.2, the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero by a jurisdiction should be regarded as within the scope of Paragraph A of the Code of Conduct for Business Taxation of 1 December 1997 (Code of Conduct).⁸¹*

2. *In this respect, where criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct⁸², because of the "absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero"⁸³, then the five factors identified in paragraph B of the Code of Conduct should be applied by analogy to assess whether the criterion 2.2⁸⁴ has been met.*

3. *In the context of criterion 2.2 the fact of absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero cannot alone be a reason for concluding that a jurisdiction does not meet the requirements of criterion 2.2.*

4. *A jurisdiction should be deemed as non-compliant with criterion 2.2 if it refuses to engage in a meaningful dialogue or does not provide the information or explanations that the Code of Conduct Group may reasonably require or otherwise does not cooperate with the Code of Conduct Group where it needs to ascertain compliance of that jurisdiction with criterion 2.2 in the conduct of the screening process.*

6. General remarks

- Scope of Criterion 2.2 as defined by ECOFIN considers the absence of a corporate tax rate or a nominal tax rate equal to zero or almost zero in a jurisdiction as a "measure" significantly affecting the location of business activities (Paragraph A of the Code of Conduct).

⁸¹ *"Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community." (OJ C 2, 06.01.1998, p. 3)*

⁸² *"Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor." (OJ C 2, 06.01.1998, p. 3)*

⁸³ *This may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.*

⁸⁴ *Criterion 2.2 reads as follows: "The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction."*

- To this extent, Criterion 2.2 is aimed at verifying whether this "measure" facilitates offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.
- Criterion 2.2 applies only when the standard code assessment (i.e. criterion 2.1) cannot be applied because of the absence in a third country jurisdiction of a corporate tax system or because the jurisdiction applies a nominal corporate tax rate equal to zero or almost zero.
- Criterion 2.2 assesses the legal framework and certain economic evidences of a jurisdiction with regard to the five criteria established under paragraph B of the Code of Conduct to be interpreted by analogy.
- Advantages granted by a third country jurisdictions influencing in a significant way the location of business activities have to be seen in connection with a nominal corporate tax rate equal to zero or almost zero as well as in connection with the absence of corporate taxation, to the extent in both cases the standard Code of Conduct test could not be applied. These latter features have in fact to be considered *per se* as advantages to be assessed under this code test.
- In general terms, any guidance developed by the COCG over the years for assessing tax measures within the scope of the 1998 Code of Conduct should be applied consistently and by analogy for the purpose of this test⁸⁵.
- A jurisdiction can only be deemed to have failed the assessment under this criterion when 'offshore structures and arrangements attracting profits which do not reflect real economic activity in the jurisdiction' are due to rules or practices, including outside the taxation area, which a jurisdiction can reasonably be asked to amend, or are due to a lack of those rules and requirements needed to be compliant with this test that a jurisdiction can reasonably be asked to introduce.
- The introduction of a CIT system or a positive CIT rate is not amongst the actions that a third country jurisdiction can be asked to take in order to be in line with the requirements under this test, since the absence of a corporate tax base or a zero or almost zero level tax rate cannot by itself be deemed as criterion for evaluating a jurisdiction as non-compliant.
- Nonetheless, criterion 2.2 implies automatic non-compliance for those jurisdictions that refuse to cooperate with the EU for the assessment of their legal framework.

B. Gateway test

3. Gateway criterion as it reads now in the Code of Conduct

"Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this Code."

⁸⁵ See doc. 14039/98 of 11 December 1998 "Code of Conduct (Business Taxation) – Interpretation of Criteria" and its further updates.

4. Guidelines for application by analogy

- The functioning of the Gateway test seems rather clear from the definition of scope of Criterion 2.2 as agreed by Ecofin in February this year.
- In particular, this test is satisfied when *"criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct, because of the "absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero"*

C. Criteria 1 and 2

4. Criterion 1 of the current Code Criteria as it is now

"Whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents"

5. Criterion 2 of the current Code Criteria as it is now

"Whether advantages are ring-fenced from domestic market, so they do not affect the national tax base"

6. Guidelines for application by analogy

- For the purpose of applying criterion 2.2., "advantages" should be understood as the existence of zero or almost zero taxation or the absence of CIT.
- Factor 1 as well as factor 2 of the current code criteria contain two main elements: (a) legal ring-fencing and (b) de-facto ring-fencing.
- De jure ring-fencing occurs when advantages are only granted to non-residents by the laws and regulations governing the establishment and operations of businesses in a given jurisdiction.
- Where there is no an effective CIT-system in place, it should be then assessed whether aspects of the legal framework, including non-CIT aspects, effectively provide for a ring-fenced scenario.
- An example of that would be non-tax requirements for companies to allow for the residence or for the access to the domestic market of the tested jurisdiction.
- For this purpose, any measure leading to a different treatment between domestic companies and companies held by non-residents or whose activities are disconnected from the domestic market shall be assessed.

- If for instance a jurisdiction grants "advantages" to a company only if it abstains from activities in the local economy (criterion 2) or only to the extent such activities are dependent on a specific business license (criterion 1 and 2) or only to the extent the activities are undertaken by non-residents (criterion 1), this could be assessed as a possible feature of a ring fencing system in place. By analogy this could also be relevant for other taxes (i.e. other than CIT).
- De-facto ring-fencing usually refers to a situation whereby the advantage is not explicitly granted by a country only to non-residents although, in fact, it is enjoyed only or almost only by non-residents.
- As to the de-facto ring-fencing, it is usually considered how many of the taxpayers benefitting from the advantage are in fact non-residents. If, for instance all or nearly all of the subjects benefitting from zero taxation are non-residents (including domestic companies with foreign shareholding), sub-criteria 1 (b) as well as 2 (b) would be considered as met (i.e. the jurisdiction would be deemed to be non-compliant under this step of the Code test).

D. Criterion 3

3. Criterion 3 of the current Code Criteria as it is now

"Whether advantages are granted even without any real economic activity and substantial economic presence with the Member State offering such tax advantages"

4. Guidelines for application by analogy

In order to evaluate whether advantages are granted even without any real economic activity and substantial economic presence, it has to be ascertained:

- whether a jurisdiction does require a company or any other undertaking (e.g. for its incorporation and/or its operations) the carrying out of real economic activities and a substantial economic presence:
 - "Real economic activity" relates to the nature of the activity that benefits from the non-taxation at issue.
 - "Substantial economic presence" relates to the factual manifestations of the activity that benefits from the non-taxation at issue.
 - By way of example and under the assumption that, in general, elements considered in the past by the COCG are relevant also for this analysis, the current assessment should consider the following elements taking into account the features of the industry/sector in question: adequate level of employees, adequate level of annual expenditure to be incurred; physical offices and premises, investments or relevant types of activities to be undertaken.

- whether there is an adequate de jure and de facto link between real economic activity carried on in the jurisdiction and the profits which are not subject to taxation;
- whether governmental authorities, including tax authorities of a jurisdiction, are capable of (and are actually doing) investigations on the carrying out of real economic activities and a substantial economic presence on its territory, and exchanges of relevant information with other tax authorities;
- whether there are any sanctions for failing to meet substantial activities requirements.

E. Criterion 4

3. Criterion 4 of the current Code Criteria as it is now

“Whether the rules for profit determination in respect of activities within a multinational group of companies depart from internationally accepted principles, notably the rules agreed upon within the OECD”

4. Guidelines for application by analogy

- In assessing the adherence of profit determination rules to internationally agreed standards (e.g. OECD TP Guidelines or other similar accounting standards) first of all it should be verified if and to what extent this analysis is relevant for jurisdictions not applying a CIT system.
- To this aim it seems relevant to consider that a jurisdiction not applying a CIT system should not negatively affect a proper allocation of profits departing from internationally agreed standards. Jurisdictions should take appropriate steps in ensuring taxing countries are able to exercise their taxing rights i.e. via CBCR, transparency and other modes of information sharing.
- Where relevant, it should be ascertained if OECD’s agreed principles or similar accounting standards for the determination of profits have been endorsed in a given jurisdiction.
- To this regard, it is critical to ascertain how these rules are implemented and consolidated in the jurisdictions concerned. In the absence of corporate income taxation in a given jurisdiction, also alternative transfer pricing rules can be taken into account, verifying whether they are comparable and compatible with internationally agreed principles (for instance a fair market value approach under international accounting principles).
- This Criterion shall prevent from allowing multinational companies to use transfer pricing rules departing from the OECD Transfer Pricing Guidelines in order to allocate their profits to zero tax jurisdictions.
- Answers to questions from 2.9 to 2.12 should give sufficient information on how profits are determined highlighting any important departure from internationally agreed standards.

F. Criterion 5

3. Criterion 5 of the current Code Criteria as it is now

"Whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way"

4. Guidelines for application by analogy

- Criterion 5 shall evaluate whether certain features of a legal system, including the establishment of a business on its territory, lack sufficient level of transparency.
- More specifically, it has to be assessed whether any elements of the legal system, including the granting of tax residence or the setting up of companies can be granted on a discretionary basis or whether it is bound by the law, verifying whether any legal provision, including non-tax provisions, can be deemed to be discretionary in matters related to the setting up of a company in that jurisdiction.
- This factor shall prevent a jurisdiction from having an insufficient level of transparency within its regulatory framework, considering that advantages as considered in this Code test stem from the registration of a company in a jurisdiction.
- Answers to questions from 2.13 to 2.16 should give sufficient information on how transparency is ensured in a jurisdiction on certain steps to be undertaken by companies in order to benefit from the advantages provided therein.

**Mission of Uruguay to the EU
Avenue F.D. Roosevelt 22
1050 Bruxelles**

[REDACTED]

[REDACTED]

[REDACTED]

Brussels, 24 October 2017

Subject: Letter for the attention of the authorities of the Eastern Republic of Uruguay

- Taxation: follow-up to the screening process

Dear Sir, Dear Madam,

By a letter dated 19 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Uruguay was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁸⁶.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of Uruguay with the set criteria.

We acknowledge that in your email dated 6 July 2017 you have pointed out a willingness to address the identified shortcomings. In welcoming this indication, we would now need a firm commitment at a high political level that Uruguay will address the deficiencies listed in Annex 1. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

⁸⁶ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella



c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Uruguay in order to comply with the set criteria.

Criterion 2.1

In our letter dated 19 June 2017, we have informed Uruguay that we would take stock of the assessment conducted by the Forum on Harmful Tax Practices for the purpose of evaluating the preferential tax regimes of Uruguay. On the basis of such assessment, it has been found that the regimes named *Free zones*, *Shared service centre*, and *Software industry incentives* have been considered in the process of being amended by the Forum on Harmful Tax Practices. For this reason, we invite Uruguay to reiterate this commitment to the Code of Conduct Group, under the procedure specified in the letter to which this annex is attached, and to communicate the timeline for doing so.

[REDACTED]
Office of International Tax Counsel
Office of Tax Policy
U.S. Department of the Treasury / Relevant Authorities of the U.S.
1500 Pennsylvania Avenue, NW
Washington, DC 20220
UNITED STATES

[REDACTED]
Cc:

[REDACTED]

Brussels, 2 February 2018

Subject: Letter for the attention of the authorities of United States of America
- The EU list of non-cooperative jurisdictions for tax purposes

Dear Sir,

By a letter dated 7 November 2017 from the Chair of the Code of Conduct Group (Business Taxation), the United States of America was informed on the outcome of the assessment made by the experts designated to verify the compliance of the US Virgin Islands with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures.

In the same letter, you were also informed that the Code of Conduct Group decided to put the EU listing process on hold for all jurisdictions that have been severely struck by the devastating storms of September 2017. The Council of the EU confirmed in December 2017 that the listing process should be put on hold for these jurisdictions and instructed the Code of Conduct Group to pursue the contacts by February 2018 with the view to resolving the concerns by the end of 2018.

In reiterating our sympathy and support, we want to express our hope that the US Virgin Islands is on its way towards full recovery from the injurious effects of the hurricanes and managed to rebuild its key infrastructures destroyed by the storms in September 2017.

Being faithful that the US Virgin Islands successfully overcame the difficulties encountered because of the natural disasters, we are now contacting you with the aim of restarting the process. To that end, we

would like to verify whether US Virgin Islands intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite US Virgin Islands to cooperate with the Code of Conduct and commit, at a high political level, to addressing deficiencies listed in Annex I, which were already mentioned in Annex I of our letter of 7 November 2017. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving by 28 February a precise timeline and a description of the steps for the implementation of the changes.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by the U.S. Virgin Islands, including through the US authorities, in order to comply with the set criteria.

Criterion 1.1

On the basis of the information available, the experts have concluded that the U.S. Virgin Islands is neither compliant with the Automatic Exchange of Information standard (the CRS) nor covered by the FATCA IGAs concluded by the US with all EU Member States. Therefore, we invite the U.S. Virgin Islands, including through the US authorities, to commit to the following and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so:

- Commit to the OECD Automatic Exchange of Information standard
- Sign either the Multilateral Competent Authority Agreement or sign bilateral agreements with all EU Member States
- Enact the primary/secondary legislation for implementing the standard in your domestic law
- Notify the OECD coordinating body with the list of all EU Member States with a view to activate the exchange of information with all of them

Or to commit to have, in agreement with the jurisdiction they are dependent on, FATCA IGAs Model 1 in place to be able to exchange information with all EU Member States.

Criterion 1.3

On the basis of the information available, the experts have concluded that the U.S. Virgin Islands participate in the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended, although the ratification instrument has not yet been deposited by the relevant Country. Therefore, we invite the U.S. Virgin Islands, including through the US authorities, to commit, in agreement with the jurisdiction to which they are dependent on, under the procedure specified in the letter to which this annex is attached, to ratify the MAC as amended, and to communicate the timeline for doing so.

Criterion 2.1

In our letter dated 21 June 2017 we have asked the U.S. Virgin Islands to confirm whether the features of the preferential tax regimes named Economic Development Programme, Exempt Companies and International Banking Centre Regulatory Act as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regime as harmful. We invite the U.S. Virgin Islands, including through the US authorities, to commit to amending or abolishing the above mentioned regime, under the procedure specified in the letter to which this annex is attached, in order to comply with the criteria applied by the Code of Conduct Group. We invite the U.S. Virgin Islands to communicate the timeline for doing so. Please consider that possible grandfathering mechanisms can be accepted only if these do not extend beyond 2021.

Criterion 3

On the basis of the information available, the experts have verified that the U.S. Virgin Islands is not a member of the Inclusive Framework on BEPS. Therefore, we invite the U.S. Virgin Islands, including through the US authorities, to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or commit to the minimum standard and to communicate the timeline for doing so.

[REDACTED]

Cc:

[REDACTED]

Brussels, 30 October 2017

Subject: Letter for the attention of the authorities of the United States of America
- Taxation: follow-up to the screening process

Dear Madam, Dear Sir,

By a letter dated 21 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), the USA was invited to provide additional information, including on its territories of American Samoa, Guam and US Virgin Islands, to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁸⁷.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiencies as regards the compliance of American Samoa and Guam with the set criteria.

As a result, we would like to verify whether the American Samoa and Guam, including through the US authorities, intend to address the identified shortcomings in these jurisdictions and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite American Samoa and Guam, including through the US authorities, to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiency/deficiencies listed in Annex 1 and 2.

⁸⁷ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

In the meantime we acknowledge with sadness that the US Virgin Islands have been severely hit by the hurricane season of last September, causing casualties and major damage to key infrastructure.

We would like to express our most sincere sympathy and support for the difficult times that the US Virgin Islands are enduring and hope that the situation will soon be back to normal. Considering these extraordinary events, the Code of Conduct Group has decided to put the EU listing process on hold for all countries or jurisdictions that have been affected by the recent hurricanes.

We nevertheless believe that it is in your interest to know the outcome of the assessment that the experts have conducted. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified deficiency / deficiencies listed in Annex 3 as regards the compliance of the US Virgin Islands with the set criteria. The Code of Conduct Group will not recommend to the Council of the EU to include the US Virgin Islands in the list of non-cooperative jurisdictions for tax purposes at the end of this year. We however would like to clarify that we will ask US Virgin Islands, including through the US authorities, to address the deficiencies identified as soon as the situation improves. By February 2018, the Code of Conduct Group will therefore contact the US Virgin Islands, including through the US authorities, to prepare the next steps of our cooperation.

We would be grateful for your response to reach us by 17 November 2017.

Sincerely,

Fabrizia Lapecorella


c.c. General Secretariat of the Council
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Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by American Samoa, including through the US authorities, in order to comply with the set criteria.

Criterion 1.1

On the basis of the information available, the experts have concluded that American Samoa is not compliant with the Automatic Exchange of Information standard (the CRS). Therefore, we invite American Samoa, including through the US authorities, to commit to the following and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so:

- Commit to the OECD Automatic Exchange of Information standard
- Sign either the Multilateral Competent Authority Agreement or sign bilateral agreements with all EU Member States
- Enact the primary/secondary legislation for implementing the standard in your domestic law
- Notify the OECD coordinating body with the list of all EU Member States with a view to activate the exchange of information with all of them;

or to commit to have, in agreement with the jurisdiction to which they are dependent, FATCA IGAs Model 1 in place to be able to exchange information with all EU Member States.

Criterion 1.3

On the basis of the information available, the experts have concluded that American Samoa participates in the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, although the ratification instrument has not yet been deposited by the relevant Country. Therefore, we invite American Samoa, including through the US authorities, to commit, in agreement with the jurisdiction to which they are dependent on, under the procedure specified in the letter to which this annex is attached, to ratify the MAC as amended or to have a network of exchange agreements in force which cover all EU Member States. and to communicate the timeline for doing so.

Criterion 3

On the basis of the information available, the experts have concluded that American Samoa is not a member of the Inclusive Framework on BEPS. Therefore, we invite American Samoa, including through the US authorities, to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or to commit to the minimum standard and to communicate the timeline for doing so.

Request for commitment(s) by the Chair of the Code of Conduct Group

Annex II sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Guam, including through the US authorities, in order to comply with the set criteria.

Criterion 1.1

On the basis of the information available, the experts have concluded that Guam is not compliant with the Automatic Exchange of Information standard (the CRS). Therefore, we invite Guam, including through the US authorities, to commit to the following and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so:

- Commit to the OECD Automatic Exchange of Information standard
- Sign either the Multilateral Competent Authority Agreement or sign bilateral agreements with all EU Member States
- Enact the primary/secondary legislation for implementing the standard in your domestic law

Notify the OECD coordinating body with the list of all EU Member States with a view to activate the exchange of information with all of them; or to commit to have, in agreement with the jurisdiction to which they are dependent, FATCA IGAs Model 1 in place to be able to exchange information with all EU Member States.

Criterion 1.3

On the basis of the information available, the experts have concluded that Guam participates in the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, although the ratification instrument has not yet been deposited by the relevant Country. Therefore, we invite Guam, including through the US authorities, to commit, in agreement with the jurisdiction to which they are dependent, under the procedure specified in the letter to which this annex is attached, to ratify the MAC as amended or to have a network of exchange agreements in force which cover all EU Member States. and to communicate the timeline for doing so.

Criterion 3

On the basis of the information available, the experts have concluded that Guam is not a member of the Inclusive Framework on BEPS. Therefore, we invite Guam, including through the US authorities, to commit, under the procedure specified in the letter to which this annex is attached, to join the Inclusive Framework or to commit to the minimum standard and to communicate the timeline for doing so.

Request for commitment(s) by the Chair of the Code of Conduct Group

Annex III sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by US Virgin Islands, including through the US authorities, in order to comply with the set criteria.

Criterion 1.1

On the basis of the information available, the experts have concluded that US Virgin Islands are neither compliant with the Automatic Exchange of Information standard (the CRS) nor covered by FATCA IGAs concluded by the US with all EU Member States.

Criterion 1.3

On the basis of the information available, the experts have concluded that US Virgin Islands participates in the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended, although the ratification instrument has not yet been deposited by the relevant Country. In addition, the experts have concluded that US Virgin Islands do not have a network of exchange agreements which covers all EU Member States.

Criterion 2.1

In our letter dated 21 June 2017 we have asked USA to confirm whether the features of the preferential tax regime of US Virgin Islands named *Economic Development Programme, Exempt Companies* and *International Banking Centre* as described in the letter were correct and complete. On the basis of the information received the experts continue to consider such regimes as harmful.

Criterion 3

On the basis of the information available, the experts have concluded that US Virgin Islands is not a member of the Inclusive Framework on BEPS.

Ministry of Finance & Economic Management
Vanuatu Competent Authority
Department of Finance & Treasury

MFEM Building
Private Mail Bag 9031
Port Vila
Republic of Vanuatu

Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of Vanuatu

- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Vanuatu was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁸⁸.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified some concerns as regards the possible compliance of Vanuatu with the set criteria.

We would now need a firm commitment at high political level that Vanuatu will address the deficiencies identified in Annex I. Such a commitment would allow the Code of Conduct Group to positively consider future changes in our ongoing work.

Moreover, the compliance of your legal and regulatory framework has in particular been assessed with reference to criterion 2.2 of the set criteria. This criterion 2.2 has been agreed by the EU Finance Ministers in November 2016 and its scope has been further defined by the same Ministers in February 2017 (Scope of 2.2). In addition, the Code of Conduct Group (Business Taxation) this year agreed detailed Terms of Reference for the application of this criterion. These documents are attached to this letter.

According to criterion 2.2, jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. In doing this analysis, the absence of corporate income tax or a nominal corporate income tax have been

⁸⁸ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

taken into account, in accordance with the Scope of 2.2 as defined in the February 2017 Council Conclusions.

Following a technical analysis the main concern relates to de facto lack of substance, which may be due to the absence of legal substance requirements, for entities doing business in or through your jurisdiction. The absence of legal substance requirements, as explained in the Terms of Reference, increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial presence which is a concern from the perspective of criterion 2.2. In light of this, experts have provisionally considered the tax system of Vanuatu as harmful.

In addition the same technical analysis revealed that, in your jurisdiction, legal mechanisms exist that enable the granting of advantages only to non-residents or in respect of transactions carried out with non-residents, in particular, through the incorporation of entities which are not permitted to carry on business in your jurisdiction.

As a result of this, we would like to take this opportunity to verify whether Vanuatu intends to address the identified concerns and commit to future changes.

We invite Vanuatu to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the above mentioned concerns. In particular, to address the issues that arise in connection with entities operating without any substance, Vanuatu is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Vanuatu is asked to discuss with the Code what further steps could better ensure that businesses have sufficient economic substance. A way to achieve this could be through the imposition of substance requirements, where appropriate. In addition Vanuatu is asked to abolish or amend legal mechanisms that enable the granting of advantages only to non-residents or in respect of transactions carried out with non-residents. Moreover, this may require that you introduce additional accounting and tax reporting obligations such that an appropriate notification regime for entities that give rise to the risks and concerns underlying criterion 2.2 can ensure the collection and subsequent exchange of relevant information with Member States.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified concerns by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response to reach us by 17 November 2017, that is the date at which we expect to gather all relevant information from our partners so that our Ministers can take an informed decision in December.

Sincerely,

Fabrizia Lapecorella



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Request for commitment by the Chair of the Code of Conduct Group

Annex I set out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Vanuatu in order to comply with the set criteria.

We acknowledge that in the reply sent on 25 August 2017, you confirmed that Vanuatu is not a member of the Inclusive Framework on BEPS and has not implemented the BEPS minimum standards. We also acknowledge that, given the features of your legal system, some of these minimum standards might not be relevant for Vanuatu. However, in the same reply, you confirmed that Vanuatu intends to implement some of the BEPS minimum standards. We invite Vanuatu to confirm, under the procedure specified in the letter to which this annex is attached, this commitment and to communicate the timeline for doing so, specifying in particular whether it intends to introduce the Country by Country reporting as defined under the BEPS Action 13.

[REDACTED]
**Deputy Director for the International
Taxation Department
General Department of Taxation
Ministry of Finance of Viet Nam**
[REDACTED]

Brussels, 24 October 2017

Subject: Letter for the attention of the authorities of the Socialist Republic of Viet Nam
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 15 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), the Socialist Republic of Viet Nam was invited to provide additional information to the experts designated to assess the compliance with the criteria agreed by the Council of the EU, concerning the areas of tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Shifting (anti-BEPS) measures, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016⁸⁹.

In the absence of reply, the experts have based their assessment on publicly available information and have identified deficiencies as regards the compliance of Viet Nam with the set criteria.

We are aware that Viet Nam has a regime currently under review by the Forum on Harmful Tax Practices. Nevertheless, we would need to verify independently whether Viet Nam intends to address the identified shortcomings and commit to future changes. In order for the Code of Conduct Group to positively consider such commitment, we invite Viet Nam to cooperate with the Code of Conduct Group and commit, at a high political level, to addressing the deficiencies listed in Annex 1.

The Code of Conduct Group will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest. To this end, the Code of Conduct Group would appreciate receiving a precise timeline and a description of the steps for the implementation of the changes by the date indicated below.

The Code of Conduct Group will continue monitoring the commitments taken by the identified jurisdictions to consider whether they have been fulfilled and, as the case may be, will recommend an update to the EU list of non-cooperative jurisdictions for tax purposes.

We would be grateful for your response on the issue of commitments to reach us by 17 November 2017.

⁸⁹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

Sincerely,

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Request for commitment(s) by the Chair of the Code of Conduct Group

Annex I sets out the deficiencies identified by the experts designated by the Code of Conduct Group and the proposed actions to be undertaken by Viet Nam in order to comply with the set criteria.

Criterion 1.2

On the basis of the information available, the experts have verified that Viet Nam is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter, the Global Forum). Therefore, we invite Viet Nam to commit to join the Global Forum or to be assessed by the same and to communicate, under the procedure specified in the letter to which this annex is attached, the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to join by end of 2019.

Criterion 1.3

On the basis of the information available, the experts have concluded that Viet Nam has not signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), as amended. Therefore, we invite Viet Nam to commit, under the procedure specified in the letter to which this annex is attached, to sign and ratify the MAC, and to communicate the timeline for doing so. Please consider that, since we recognise your status as developing country, we can accept a commitment to address these deficiencies by the end of 2019.

Criterion 2.1

In our letter dated 15 June 2017 we have asked Viet Nam to confirm whether the features of the preferential tax regime named *Export processing zones* as described in the letter were correct and complete. Unfortunately, we have not received a reply on these potentially harmful aspects and the experts continue to consider such regime as harmful. We invite Viet Nam to commit to amend or abolish the above mentioned regime in order to comply with the criteria applied by the Forum on Harmful Tax Practices and the Code of Conduct Group or provide new evidence that the regime is actually not harmful. We invite Viet Nam to communicate the timeline for doing so.