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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council

To: Delegations

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

- Compilation of commitment letters received from jurisdictions
- = Guernsey
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Fabrizia Lapecorella
Chair of the Code of Conduct Group (Business Taxation)
General Secretariat of the Council
Rue de la Loi/Weststraat 175
B-1048 Brussels

17 November 2017

Dear Ms Lapecorella

I am writing further to your letter dated 6 November 2017, referencing the provisional assessment of the experts designated by the Code of Conduct Group on Business Taxation ('Code Group') in regard to Guernsey's compliance with the criteria set out by the Council in its November 2016 conclusions for establishing an "EU list of non-cooperative jurisdictions".

This letter confirms that:

- Guernsey is committed to remaining a jurisdiction that is cooperative with the EU and its Member States.
- **Guernsey commits to addressing the concerns around economic substance and to making necessary changes by the end of December 2018, taking into account the Terms of Reference enclosed with your letter.**
- **These changes will include steps to ensure that Guernsey businesses have sufficient economic substance. It is envisaged that this will be achieved through the imposition of substance requirements through measures, which may include: amending legislation; changes to our regulatory requirements; additional accounting or tax reporting obligations; and notification regimes.**
- **We propose that we begin dialogue with the Code Group in January 2018 to understand better the specific concerns identified. This will enable us to develop proposals for change in the second quarter of 2018 with a view to implementation during the third and fourth quarters of 2018.**
- We believe that there are many other issues that it would be mutually beneficial to discuss as part of a regular dialogue, and to strengthen partnership between Guernsey and the EU further.

Response to the provisional conclusions

We note the provisional conclusion of the experts that the tax system of Guernsey is regarded as 'harmful' due to their concern in relation to a perceived *de facto* lack of substance, which may be due to the absence of specific legal substance requirements, for entities doing business in or through our jurisdiction.

Given that Guernsey's tax regime was assessed as 'non-harmful' by the Code Group in 2011-12 as it was compliant with the Code of Conduct criteria, we are naturally disappointed at this provisional conclusion. However, we recognise that for the current screening exercise the Code of Conduct criteria are being applied by analogy to regimes such as ours which have a general corporate income tax rate of zero (and hence where the standard Code of Conduct test does not apply). We welcome the opportunity to now engage in substantive dialogue with the Code Group on its provisional conclusions and respectfully request that we have sight of the expert panel's work to ensure that this dialogue is as well prepared and as productive as possible.

Good neighbours

Guernsey attaches importance to maintaining its position as a cooperative jurisdiction, and to continuing to be a 'good neighbour' to the EU on tax. As we made clear in the material submitted to the Code Group as part of the screening process, Guernsey has consistently shown itself to be a cooperative jurisdiction on tax matters, meeting and in many cases being at the forefront of adopting all relevant international standards. This was publicly recognised by, amongst others, Commissioner Moscovici as recently as January 2016.

In fact, this commitment to being a cooperative 'good neighbour' also extends beyond tax. Guernsey contributes to the EU capital market through its investment funds sector, and has actively contributed to the work of the Commission on the Capital Markets Union. We look forward to working in partnership to establish a stronger relationship in the future, based on fair access to markets and recognition of international standards.

Commitment and timelines

Consistent with this longstanding policy of cooperation and good neighbourliness, on behalf of the Government of Guernsey, I confirm our commitment to address by the end of December 2018 the concerns around economic substance that have been identified by the experts; and to maintain and further enhance our cooperation and dialogue with the Code Group in so doing.

In order to fulfil this commitment, we recognise that we will need to make changes to our domestic legislation and regulatory requirements. We recognise that it may also require additional accounting or tax reporting obligations, such as appropriate notification regimes for entities that give rise to the risk and concerns raised by the Code Group in its provisional conclusions. In particular we will take into account the Terms of Reference enclosed with your letter, particularly section D (“Guidelines for application by analogy of Code Criterion 3”).

We welcome your suggestion of discussion with the Code Group. We believe that an early meeting in January 2018 would be valuable to enable us to better understand the specific concerns, and how exactly the concepts of ‘real economic activity’ and ‘substance’ are to be interpreted. Early dialogue of this nature with the Code Group will enable us to ensure that the changes which we are committing to make will address the concerns identified.

Once we have had this meeting with the Code Group in early 2018, we will be in a position to review and understand what changes are required, and then be able to confirm the exact steps that we will be taking in the second quarter of 2018. This will allow for the implementation of these proposals, including allowing time for any changes in legislation, during the third and fourth quarters of 2018. This will ensure that Guernsey is able to address the concerns raised by the Code Group by 31 December 2018.

Future Relationship

As part of this dialogue with the Code Group, we believe it would be desirable to take the opportunity to discuss related issues in order to put the relationship on tax matters between Guernsey and the EU and its Member States on a stable footing for the medium to long term. This is in line with our previously expressed commitment to maintain our position as a cooperative jurisdiction and a good neighbour.

For example, we noted that the Commission’s scoreboard in September 2016 categorised favourably those five jurisdictions which had recently concluded tax transparency agreements with the EU. Guernsey already provides the same information automatically to all EU Member States under the Common Reporting Standard (CRS) as those jurisdictions. We therefore wish to further formalise our cooperation on tax transparency through an agreement with the EU, as the other five jurisdictions have done.

I will be in Brussels on 22 and 23 November and hope it will be possible to meet with you for an initial discussion of the above points ahead of the proposed Guernsey meeting with the Code Group in January.

I am copying this letter to the Estonian Permanent Representative to the EU, Ambassador Kaja Tael, as Presidency, and to EU Commissioner Pierre Moscovici.

Yours sincerely



Deputy Gavin St Pier
Chief Minister
Government of Guernsey
