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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

= Jersey

CHIEF MINISTER OF JERSEY
Cyril Le Marquand House
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Ms Fabrizia Lapecorella
Chair of the Code of Conduct Group (Business Taxation)
General Secretariat of the Council
Rue de la Loi
Wetstraat 175
B-1048 Brussels, BELGIUM

17 November 2017

Dear Ms Lapecorella,

Thank you for your letter of 6 November 2017.

Jersey's reputation as a well-regulated and transparent jurisdiction, that supports the development and implementation of international standards, is important to the Government. We will continue to embrace the new rules that the global community identifies, originating in the EU or OECD, to address emerging risks and practices in cross-border finance.

I welcome your recognition that the Government of Jersey has cooperated with the Code Group in its work, and your acknowledgment that the information provided by Jersey has helped to clarify aspects of our tax regime. This reflects our longstanding commitment to pursuing a good neighbour policy with our partners in the European Union, and our support for ongoing work to improve transparency and information sharing in tax matters.

I can therefore confirm the Government of Jersey's unequivocal commitment to addressing the concerns that the EU Code of Conduct Group has identified.

In particular:

- **I confirm that we will make the necessary changes to ensure businesses have sufficient economic substance where appropriate, taking account in particular of the Terms of Reference enclosed with your letter.**
- **I recognise that changes will need to be reflected in our legal and regulatory framework, and we have already started to review relevant legislation in this regard, including the Income Tax (Jersey) Law, the Companies (Jersey) Law and the Control of Housing and Work (Jersey) Law.**
- **I also recognise that additional accounting and tax reporting obligations may be required.**
- **I commit to addressing the Code Group's concerns by December 2018.** I note the Code Group will not recommend the listing of those jurisdictions that commit to correcting the identified concerns by this date. To this end, I have attached an indicative timeline to this letter as an annex, providing both a description of the steps to be taken and the likely timeframe for implementing any changes.

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Your offer of dialogue is welcome and an early meeting, in January 2018, will be important. Your letter makes clear that the sole area of concern relates to the compliance of our legal and regulatory framework with criterion 2.2 of the set criteria: specifically, the possibility of a de facto lack of substance, which may be due to the absence of legal substance requirements for entities doing business in or through Jersey.

I would like to take this opportunity to reiterate that Jersey does not encourage or welcome those seeking to pursue aggressive tax avoidance: we will not be a safe harbour for such operators. I am committed to further enhancing and strengthening this long-standing policy and the enforcement of it. I will make sure we have the necessary resource to undertake this work, and that the appropriate sanctions are in place should there be a failure to adhere to our legal and regulatory framework.

Early dialogue with the Code Group will ensure we are working on a shared understanding of what 'economic substance' means, taking account of the enclosed Terms of Reference, and that the changes we make will address the concerns identified.

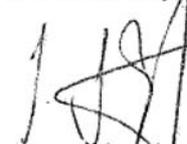
I would also welcome the opportunity to discuss and agree a formal cooperation agreement on tax transparency between Jersey and the EU, as have recently been concluded with Switzerland, Liechtenstein, San Marino, Andorra and Monaco. I have noted that the Commission, as part of its scoreboard exercise in 2016, considered these five jurisdictions favourably.

We have previously raised concerns about the earlier lack of dialogue in this process, and given our cooperation to date, I am naturally disappointed in the Expert Panel's provisional findings. However, I now look forward to working with the Code Group on these matters and to the Group's formal recognition that we remain a cooperative jurisdiction for tax purposes in due course.

To this end I would also note that I will be in Brussels on 22 and 23 November and would appreciate the opportunity to meet with you to reach early agreement on a date to initiate our discussions on these matters.

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

Yours sincerely,



Senator Ian Gorst
Chief Minister of Jersey

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ANNEX – GOVERNMENT OF JERSEY'S INDICATIVE TIMELINE

Development of Sectoral "Economic Substance" Tests

It is likely that a programme of work to develop and implement appropriate tests of economic substance will be led/co-ordinated by the Comptroller of Taxes and the Island's Tax Policy Unit. The Comptroller will instigate a programme of work with the following key milestones.

To note, national elections are due to take place in May 2018. There is likely to be a two-month period in which the business of government will be delayed until a new administration is formed.

Determine what sectors and/or sub-sectors of Jersey's economy require substance tests.	By 31 January 2018
Early discussion with the Code Group, as proposed in their letter of 6/11/2017, to discuss what further steps could be taken by Jersey.	January 2018
Conduct research and consultation with businesses/sectors and other Governments - to inform the establishment of a range of practical substance tests.	By 30 May 2018
National Elections Purdah Elections New Administration formed (approx.)	April 2018 May 2018 June 2018
Present early findings and recommendations to a newly formed Government.	By 31 July 2018
Appraise the need for accounting provisions to measure ongoing substance according to tests on a recurring basis.	By 31 August 2018
Appraise the need for tax (or other kinds of) reporting provisions - to report substance according to the tests.	By 31 August 2018
Publish and consult on any draft legislation to support substance tests and on any accounting and tax regulations.	By 30 September 2018
Lodge firm proposals with the States Assembly (Jersey's Parliament) as part of the Budget for 2019.	By 23 October 2018
Determine which arm of Government should lead and exercise any regulatory oversight. The obvious candidates are the Comptroller of Taxes or – for the finance sector - the Jersey Financial Services Commission.	By 16 November 2018
The States Assembly debate and vote upon any legislative and regulatory changes which, if passed, will probably have immediate effect by "Acte Operatoire".	By 21 December 2018
Implement substance tests.	1 January 2019

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Any legal changes would be presented alongside the next Budget (in late November or early December 2018) and – if possible – immediately enacted pending Her Britannic Majesty's assent early in 2019.

We will review the opportunities to use the existing network of Competent Authorities (established by our international tax treaties) to enable other jurisdictions to challenge substance and tax residency.