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European Union

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DECLASSIFICATION

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dated: 29 January 2018
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Subject: Note to the Code of Conduct Group (Business Taxation)

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Note to the Code of Conduct Group (Business Taxation)

As a follow-up to the ECOFIN on 5 December 2017 (see paragraph 12 of the Council conclusions, doc. 15429/17), delegations will find attached the draft letter to US Virgin Islands.

This draft letter is submitted for approval at the meeting of the subgroup on third countries of the Code of Conduct Group (Business Taxation) of 2 February 2018.

DECLASSIFIED

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,

ANNEX I

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.

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