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European Union

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DECLASSIFICATION

of document: 5425/18 RESTREINT UE/EU RESTRICTED
dated: 17 January 2018
new status: Public
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.



Council of the
European Union

Brussels, 17 January 2018
(OR. en)

5425/18

RESTREINT UE/EU RESTRICTED

FISC 23

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, delegations will find attached the draft letters to 7 of the jurisdictions mentioned in paragraph 12 of the Council conclusions (doc. 15429/17).

DECLASSIFIED

ANGUILLA

Dear

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.

RESTREINT UE/EU RESTRICTED

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,

ANNEX I

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.

ANTIGUA AND BARBUDA

Dear Sir,

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,

ANNEX I

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.

BAHAMAS

Dear ...

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.

RESTREINT UE/EU RESTRICTED

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,

ANNEX I

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.

BRITISH VIRGIN ISLANDS

Dear...

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 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.

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.

RESTREINT UE/EU RESTRICTED

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,

DECLASSIFIED

DOMINICA

Dear Sir,

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,

ANNEX I

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.

SAINT KITTS AND NEVIS

Dear Sir,

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,

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 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.

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TURKS AND CAICOS

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,

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.¹"

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).²
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 Conduct³, because of the "absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero"⁴, then the five factors identified in paragraph B of the Code of Conduct should be applied by analogy to assess whether the criterion 2.2⁵ 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.

¹ Scope of criterion 2.2 is set out in Appendix 2 to this Annex (here as Annex II).

² "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)

³ "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)

⁴ This may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

⁵ 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.

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- 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)⁶?
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⁶ 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.*