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

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NOTE

From:	Commission Services
To:	Code of Conduct Group (Business Taxation)
Subject:	The EU list of non-cooperative jurisdictions for tax purposes – Progress Report - Hong Kong

Delegations will find attached a document by the Commission services.

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ANNEX

PROGRESS REPORT HONG KONG

Code of Conduct Group: 27 February 2018

Background

Last year, the Code of Conduct found that Hong Kong failed to meet listing criteria 1.1, 1.3 and 2.1. This was pointed out to the Hong Kong authorities in the letter from the Chair of the Code of Conduct Group on 23 October 2017.

The Hong Kong authorities committed to align their tax system with the identified EU listing criteria in a letter to the Chair dated 16 November 2017. As a consequence, Hong Kong was put in Annex II to the Council Conclusions of 5 December 2017.

Hong Kong was removed from Annex II for criteria 1.1 and 1.3 during the course of 2018 following implementation of their commitments.

This assessment report updates the assessment on criterion 2.1 presented on 18 January 2019.

Recent developments

In December, Hong Kong had explained, in the framework of the 12th EU-Hong Kong Structured Dialogue meeting, that the legislative procedure to adopt the draft legislation concerning the two last regimes - *Offshore funds* and *Offshore private equity funds* – was taking longer than expected. Therefore, Hong Kong could not meet the deadline of 31/12/2018 under the EU listing process.

On 20 February, Hong Kong adopted the Bill to amend both regimes. The new legislation will enter into force on 1 April 2019.

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As outlined in the last progress report, Hong Kong has amended both regimes to remove the ring-fencing features, by opening the regimes to all funds (both on- and offshore) and all type of investment (removal of the condition that investment had to be made in companies incorporated overseas). There is an exception concerning immovable property: if a fund invests in a private company that holds, directly or indirectly, more than 10% of its assets in immovable property (excluding infrastructure) in Hong Kong, the fund will be taxed on the profits arising from such an investment in the private company. However, given that the ring-fencing features have been removed for all other types of income, this last feature should not be regarded as detrimental. The Bill does not mention grandfathering.

It should be recalled that the FHTP concluded in its October 2018 meeting that the three regimes under FHTP review[1], had been amended and not harmful, and the Code sub-group endorsed this assessment on 18 January 2019.

<u>Conclusion</u>

Concerning the two regimes under Code of Conduct review, Hong Kong has now adopted legislation that removes the ring-fencing elements in the legal basis of the two regimes *Offshore funds* and *Offshore private equity funds*. The regimes can therefore be considered as not harmful, in line with criterion 2.1.

Concerning the three regimes under FHTP review, TAXUD proposed on 18 January that the Code of Conduct endorsed the FHTP assessments that these regimes were amended and not harmful and this was endorsed by the Group.

Therefore, the Commission proposes to remove Hong Kong from Annex II.

Question: Do delegations agree with the assessment?

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[1] Concessionary profits tax rate for professional insurers, Concessionary profits tax rate for professional reinsurers and Coprorate Treasury Centers

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