



General Secretariat of the Council
Chair of the Code of Conduct Group (Business Taxation)

Government of Guernsey
Policy & Resources Committee
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Brussels, 6 November 2017

Subject: Letter for the attention of the authorities of Guernsey
- Taxation: follow-up to the screening process

Dear Sir,

By a letter dated 9 June 2017 from the Chair of the Code of Conduct Group (Business Taxation), Guernsey was invited to provide additional information to the experts designated to assess 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, as set out in the Council "Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" of 8th November 2016¹.

¹ The official publication of these Council Conclusions can be found in the *Official Journal of the European Union*: OJ C 461, 10.12.2016, page 2.

We would like to thank you for the response to the Chair's letter and for the cooperation you have shown so far. On the basis of your explanations and publicly available information, the experts have been able to clarify certain aspects but have also identified some concerns as regards the possible compliance of Guernsey with the set criteria.

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 Guernsey as harmful.

As a result of this, we would like to take this opportunity to verify whether Guernsey intends to address the identified concerns and commit to future changes.

We invite Guernsey 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, Guernsey is asked to give reassurances to EU Member States on this issue in line with the Terms of Reference attached to this letter. Guernsey 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 country or 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 17 November 2017, that is the date at which we expect to gather all relevant information from our partners so that our Ministers can take an informed decision in December.

Sincerely,

Fabrizia Lapecorella



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