

Fabrizia Lapecorella
Chair of the Code of Conduct Group (Business Taxation)
General Secretariat of the Council
Rue de la Loi/Weststraat 175
B-1048 Brussels

21st December 2018

Dear Ms Lapecorella

Summary

Guernsey has implemented the political commitment it made to the EU in November 2017 to introduce an economic substance requirement into law by the end of 2018. Guernsey looks forward to participating in the ongoing monitoring by the EU of screened jurisdictions. We see this as part of a broader strengthening of our tax cooperation with the EU.

Implementation of the November 2017 political commitment

In Deputy St Pier's letter dated 17th November 2017, he made a commitment on behalf of the government of Guernsey to address the concerns in relation to economic substance identified by the Code of Conduct Group on Business Taxation ('Code Group'), as set out in your letter of 6th November 2017, and to make the necessary changes by the end of 2018.

I am pleased to now be able to confirm to you that Guernsey has fulfilled that commitment.

Guernsey's new Economic Substance Regime comes into effect from 1st January 2019. This regime comprises an Ordinance (enabling legislation) and a Statutory Instrument (detailed Regulations) as well as guidance documents. The annex to this letter has details of the stages in the parliamentary process followed in Guernsey and includes links to the relevant legislation.

All companies that are tax resident in Guernsey must comply with this new Economic Substance Regime for accounting periods commencing on or after 1st January 2019 and for all subsequent accounting periods. Failure to comply will result in application of the sanctions specified in the new regime. These sanctions consist of escalating financial penalties; the spontaneous exchange of information; and company strike off.

We have worked closely with the other Crown Dependencies (CDs), Jersey and the Isle of Man. The CDs have in turn greatly valued the good working relationship established with Commission Services (DG TAXUD) in the past year. We have welcomed the constructive feedback that we have received from the Commission and, through the Commission, from the Code Group as we have developed our proposals and drafted our respective legislation.

The government and the parliament in Guernsey believe that a comprehensive and robust legal regime has been put in place, by the deadline requested by the EU. This regime is an effective and proportionate response to the concerns identified by the Code Group and further cements Guernsey's reputation as a jurisdiction that is committed to tax transparency, the principles of fair taxation and the OECD's anti-BEPS agenda.

Having implemented this new Economic Substance Regime, we consider that the political commitment that was made in Deputy St Pier's letter of 17th November 2017 to you has been met. It should therefore provide a sound basis for the Code Group to recommend to the Council of the EU to remove Guernsey from Annex II of "the EU list of non-cooperative jurisdictions for tax purposes". I look forward to confirmation that ECOFIN, at its meeting in early 2019, shares that assessment and accordingly removes Guernsey from Annex II.

I should note that on 14th December, after the legislation had been approved by Parliament, our officials received further feedback from the Commission Services on a small number of relatively minor points. In the same spirit of cooperation and working in good faith that has characterised our approach throughout the process, we wish also to resolve to mutual satisfaction these few outstanding points and will be working with the Commission in the coming weeks to provide further information and clarification.

Ongoing monitoring and engagement

Guernsey attaches importance to maintaining its position as a cooperative jurisdiction, and to continuing to be a good neighbour to the EU on tax matters. In this regard, we recognise the importance of the continuing constructive dialogue with the Code Group and the Commission on the effectiveness of the legal substance requirements. This includes monitoring the effectiveness of the Economic Substance Regime, in particular the enforcement efforts in order to remedy any shortcomings in that regard. This will ensure that the sanction regime remains rigorous, effective and dissuasive.

We would welcome the opportunity to contribute to the development of the nature, format and methodology of this monitoring process, building on useful initial exchanges we have had with the Commission this year. In particular we believe it would be beneficial to align the monitoring as closely as possible to the monitoring that will be carried out on the implementation of agreed international standards, especially the monitoring that the OECD has established in the Forum for Harmful Tax Practices (FHTP).

Looking to the future, the annual monitoring process proposed by the Code Group for all screened jurisdictions will form part of Guernsey's wider engagement strategy as a cooperative jurisdiction, as well as promoting a level playing field in the application of the Code of Conduct principles – principles to which Guernsey has been voluntarily committed for many years. We look forward to developing this engagement with the EU on a transparent, constructive and mutually beneficial basis during the coming years.

That future dialogue will include engagement with the EU on the development of the additional transparency measures outlined in the CoCG 'Scoping Paper' intended to further enhance transparency. The Outline Proposal of 13th July set out the CDs response on these points.

Building upon the commitment to help develop a new international standard for exchange of beneficial ownership information made by Guernsey in 2016, we will work with the EU, as part of this future dialogue, to ensure on a reciprocal basis that legal and beneficial ownership information in relation to bodies corporate is able to be appropriately shared with EU tax and law enforcement authorities. Guernsey will also introduce legislation in respect of mandatory disclosure rules before 31st December 2019, in line with the timetable EU Member States are working to.

Having developed these proposals we support the EU's efforts to create a level playing field. As an early adopter of legal substance requirements, we stand ready to assist other jurisdictions, including any relevant EU Member States, to develop and implement substance requirements.

If you have any questions or need any further information in advance of consideration by ECOFIN, please do not hesitate to contact me directly.

I am copying this letter to EU Commissioner Pierre Moscovici, to the Austrian Permanent Representative to the EU, Ambassador Nikolaus Marschik as current Presidency, and to the Romanian Permanent Representative to the EU, Ambassador Luminita Odobescu, as incoming Presidency from 1st January 2019.

Yours sincerely



Deputy Lyndon Trott
Deputy Chief Minister
Government of Guernsey

ANNEX

LEGISLATIVE PROCESS: KEY STAGES IN ADOPTION OF GUERNSEY SUBSTANCE REGIME

Stage 1: Policy approval

The CDs presented a joint Outline Proposal to the Code Group in July 2018. Following feedback received from the Code Group, Guernsey undertook a public consultation before refining the policy proposals for publication in October 2018. The proposals were then considered by Guernsey's Parliament ('the States of Deliberation') and they received unanimous approval on 9th November 2018¹.

Stage 2: Ordinance (enabling legislation)

The parliamentary approval of the policy resulted in enabling legislation, the [Income Tax \(Substance Requirements\) \(Guernsey\) \(Amendment\) Ordinance, 2018](#)² ('the Ordinance'), being presented and approved by the Parliament on 28th November 2018.

Stage 3: Statutory Instrument (detailed regulations)

Approval of the Ordinance in turn permitted detailed legislation to be made. This took the form of a statutory instrument: The [Income Tax \(Substance Requirements\) \(Implementation\) Regulations, 2018](#)³, ('the Regulations'). This statutory instrument was made on 13th December 2018. A further statutory instrument, the [Income Tax \(Substance Requirements\) \(Implementation\) \(Amendment\) Regulations, 2018](#)⁴, was made on 19th December 2018.

Stage 4: Guidance (non-legislative)

Detail to assist business to meet the legal substance requirement is provided in the form of guidance⁵ issued by the Director of the Revenue Service under the Regulations ('the Guidance').

¹ Billet d'État XXIV, 6th November 2018: <https://www.gov.gg/CHttpHandler.ashx?id=115721&p=0>

² Income Tax (Substance Requirements) (Guernsey) (Amendment) Ordinance, 2018: <https://gov.gg/CHttpHandler.ashx?id=116153&p=0>

³ Income Tax (Substance Requirements) (Implementation) Regulations, 2018: <https://gov.gg/CHttpHandler.ashx?id=116843&p=0>

⁴ Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2018: <https://gov.gg/CHttpHandler.ashx?id=116953&p=0>

⁵ Key aspects in relation to proposed economic substance requirements, as issued by Guernsey, Isle of Man and Jersey, 21st December 2018 (tracked change version): <https://www.gov.gg/CHttpHandler.ashx?id=116156&p=0>