

**STATEMENT TO BE MADE BY THE CHIEF MINISTER  
ON MONDAY 11th DECEMBER 2017**

**Publication of EU ‘Blacklist’ of Non-cooperative Jurisdictions for Tax Purposes**

On Tuesday 5 December, EU Finance Ministers at the meeting of ECOFIN, the Economic and Financial Affairs Council in Brussels, approved the outcomes of the initial screening exercise conducted by the EU Code of Conduct Group on Business Taxation.

The Code Group’s assessment resulted in the production of an ‘EU list of non-cooperative jurisdictions for tax purposes’ known colloquially as the ‘EU blacklist’.

17 jurisdictions have been identified as non-cooperative. Jersey, rightly, is not on that list.

The ECOFIN conclusions have confirmed Jersey’s status as a cooperative jurisdiction, engaged in a constructive dialogue with the EU and committed to complying with EU and international tax standards.

This outcome reflects the Island’s well-earned reputation for delivering the highest standards of tax transparency and information exchange. We have cooperated fully with the Code Group throughout their screening process, consistent with Jersey’s pursuit of a good neighbour policy with the European Union.

Jersey makes an important contribution to the EU’s growth story. The Island is a conduit for €188bn of foreign investment into the European Union (excluding the UK), equivalent to 4% of the bloc’s total net international investment. In addition, that investment supports in the order of 88,000 European jobs.

The process followed by the Code Group initially identified 92 countries for screening. Following a table-top review, the Government of Jersey received tailored questions from the Code Group Secretariat in June and August 2017, to which we provided detailed responses.

In November 2017 letters were sent to all jurisdictions, informing them of the outcome of the Code Group’s work. Where necessary, a political commitment was requested within a specified timeframe to addressing any concerns identified.

The Code Group considered three sets of core criteria against which jurisdictions were assessed. The first were those that a jurisdiction should fulfil to be considered compliant on tax transparency.

This can be satisfied through commitment to the automatic exchange of information, Membership of the Global Forum on transparency and exchange of information for tax purposes, with a satisfactory rating, and signature and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance. Jersey satisfies all these criteria.

The second set of criteria related to anti-BEPS measures being implemented. These criteria are satisfied by Membership of the Inclusive Framework on BEPS. Again, Jersey satisfies these criteria.

The third set of criteria were those a jurisdiction should fulfil to be considered compliant on fair taxation. Concerns were highlighted by the Code Group that Jersey did not satisfy Criteria 2.2, regarding the existence of tax regimes that facilitate offshore structures which attract profits without real economic activity.

In order to maintain our status as a cooperative jurisdiction, I have made a written commitment to address these concerns by the end of next year.

I have repeatedly said that Jersey is a jurisdiction of substance, and the Jersey Financial Services Commission undertake certain economic substance tests prior to the approval of new regulated entities.

Notwithstanding the positive work already being undertaken, I have made a commitment to discuss and address the concerns of the Code Group by the end of 2018.

This work may include changes to our regulatory and legal framework, and additional accounting and reporting obligations. We have already begun the necessary preparations to enact these measures, having regard to the Code Group requirements and Jersey's best interests.

To ensure that this process will be completed by the end of 2018 the Government have produced a comprehensive timetable that includes consultation with industry, the publication of draft legislation, and scrutiny and debate by this Assembly.

That timetable is reflected in our most recent correspondence with the Code Group, which has been provided to States Members alongside the text of this statement.

This is not a time for complacency. Whilst the Island has achieved cooperative status, we must address the concerns of the Code Group within the agreed timetable.

ECOFIN has confirmed that the listing process is not a 'one off', but that jurisdictions will be subject to regular reassessment by the Code Group. We will be working to ensure that the Island's interests continue to be well-represented in Brussels.

Since 2011, the Channel Islands Brussels Office (CIBO) has provided a permanent presence in Brussels, representing the Channel Islands to the EU Institutions. The work they have undertaken has been instrumental in our interaction with the Code Group, and in ensuring that officials and representatives of the Member States have an accurate understanding of Jersey's constitutional position and the regulation of our financial services industry.

Alongside the Minister for External Relations, I will continue a regular programme of meetings in Brussels with representatives of the Commission, MEPs and the Permanent Representatives of Member States.

I should also emphasise that the government has worked closely alongside the Government of Guernsey in line with our joint commitment to engaging in Brussels and to meeting international standards. The Chief Minister of Guernsey and I have travelled to Brussels on several occasions, including meeting with Pierre Moscovici, the European Commissioner for Economic and Financial Affairs, Taxation and Customs.

I am certain that the close partnership between our two Islands will continue throughout our ongoing engagement with the Code Group and in other matters, including Brexit, in order to meet the common objectives of the Channel Islands.

Jersey's reputation as a well-regulated and transparent jurisdiction, that supports the development and implementation of international standards, is of utmost importance to the Government of Jersey. In November our commitment to meeting the highest international standards was recognised by the OECD's Global Forum when we were rated as 'compliant' across all ten areas reviewed; one of only six jurisdictions globally to receive this rating. We will continue to embrace the new rules that the global community identifies to address emerging risks and practices in cross-border finance.

**CHIEF MINISTER OF JERSEY**

Cyril Le Marquand House  
St Helier, Jersey, JE4 8QT  
Tel: +44 (0)1534 440546



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

17 November 2017

Dear Ms Lapecorella,

Thank you for your letter of 6 November 2017.

Jersey's reputation as a well-regulated and transparent jurisdiction, that supports the development and implementation of international standards, is important to the Government. We will continue to embrace the new rules that the global community identifies, originating in the EU or OECD, to address emerging risks and practices in cross-border finance.

I welcome your recognition that the Government of Jersey has cooperated with the Code Group in its work, and your acknowledgment that the information provided by Jersey has helped to clarify aspects of our tax regime. This reflects our longstanding commitment to pursuing a good neighbour policy with our partners in the European Union, and our support for ongoing work to improve transparency and information sharing in tax matters.

**I can therefore confirm the Government of Jersey's unequivocal commitment to addressing the concerns that the EU Code of Conduct Group has identified.**

In particular:

- **I confirm that we will make the necessary changes to ensure businesses have sufficient economic substance where appropriate, taking account in particular of the Terms of Reference enclosed with your letter.**
- **I recognise that changes will need to be reflected in our legal and regulatory framework**, and we have already started to review relevant legislation in this regard, including the Income Tax (Jersey) Law, the Companies (Jersey) Law and the Control of Housing and Work (Jersey) Law.
- **I also recognise that additional accounting and tax reporting obligations may be required.**
- **I commit to addressing the Code Group's concerns by December 2018.** I note the Code Group will not recommend the listing of those jurisdictions that commit to correcting the identified concerns by this date. To this end, I have attached an indicative timeline to this letter as an annex, providing both a description of the steps to be taken and the likely timeframe for implementing any changes.

Your offer of dialogue is welcome and an early meeting, in January 2018, will be important. Your letter makes clear that the sole area of concern relates to the compliance of our legal and regulatory framework with criterion 2.2 of the set criteria: specifically, the possibility of a de facto lack of substance, which may be due to the absence of legal substance requirements for entities doing business in or through Jersey.

I would like to take this opportunity to reiterate that Jersey does not encourage or welcome those seeking to pursue aggressive tax avoidance: we will not be a safe harbour for such operators. I am committed to further enhancing and strengthening this long-standing policy and the enforcement of it. I will make sure we have the necessary resource to undertake this work, and that the appropriate sanctions are in place should there be a failure to adhere to our legal and regulatory framework.

Early dialogue with the Code Group will ensure we are working on a shared understanding of what 'economic substance' means, taking account of the enclosed Terms of Reference, and that the changes we make will address the concerns identified.

I would also welcome the opportunity to discuss and agree a formal cooperation agreement on tax transparency between Jersey and the EU, as have recently been concluded with Switzerland, Liechtenstein, San Marino, Andorra and Monaco. I have noted that the Commission, as part of its scoreboard exercise in 2016, considered these five jurisdictions favourably.

We have previously raised concerns about the earlier lack of dialogue in this process, and given our cooperation to date, I am naturally disappointed in the Expert Panel's provisional findings. However, I now look forward to working with the Code Group on these matters and to the Group's formal recognition that we remain a cooperative jurisdiction for tax purposes in due course.

To this end I would also note that I will be in Brussels on 22 and 23 November and would appreciate the opportunity to meet with you to reach early agreement on a date to initiate our discussions on these matters.

I am copying this letter to the Permanent Representative of Estonia to the EU, Ambassador Kaja Tael, as Presidency, and to EU Commissioner Pierre Moscovici.

Yours sincerely,



**Senator Ian Gorst**  
**Chief Minister of Jersey**

direct dial: +44 (0)1534 440546  
email: [chiefminister@gov.je](mailto:chiefminister@gov.je)  
[www.gov.je](http://www.gov.je)



## **ANNEX – GOVERNMENT OF JERSEY’S INDICATIVE TIMELINE**

### **Development of Sectoral “Economic Substance” Tests**

It is likely that a programme of work to develop and implement appropriate tests of economic substance will be led/co-ordinated by the Comptroller of Taxes and the Island’s Tax Policy Unit. The Comptroller will instigate a programme of work with the following key milestones. To note, national elections are due to take place in May 2018. There is likely to be a two-month period in which the business of government will be delayed until a new administration is formed.

Determine what sectors and/or sub-sectors of Jersey’s economy require substance tests.	By 31 January 2018
Early discussion with the Code Group, as proposed in their letter of 6/11/2017, to discuss what further steps could be taken by Jersey.	January 2018
Conduct research and consultation with businesses/sectors and other Governments - to inform the establishment of a range of practical substance tests.	By 30 May 2018
<b>National Elections</b> Purdah Elections New Administration formed (approx.)	April 2018 May 2018 June 2018
Present early findings and recommendations to a newly formed Government.	By 31 July 2018
Appraise the need for accounting provisions to measure ongoing substance according to tests on a recurring basis.	By 31 August 2018
Appraise the need for tax (or other kinds of) reporting provisions - to report substance according to the tests.	By 31 August 2018
Publish and consult on any draft legislation to support substance tests and on any accounting and tax regulations.	By 30 September 2018
Lodge firm proposals with the States Assembly (Jersey’s Parliament) as part of the Budget for 2019.	By 23 October 2018
Determine which arm of Government should lead and exercise any regulatory oversight. The obvious candidates are the Comptroller of Taxes or – for the finance sector - the Jersey Financial Services Commission.	By 16 November 2018
The States Assembly debate and vote upon any legislative and regulatory changes which, if passed, will probably have immediate effect by “Acte Operatoire”.	By 21 December 2018
Implement substance tests.	1 January 2019

Any legal changes would be presented alongside the next Budget (in late November or early December 2018) and – if possible – immediately enacted pending Her Britannic Majesty's assent early in 2019.

We will review the opportunities to use the existing network of Competent Authorities (established by our international tax treaties) to enable other jurisdictions to challenge substance and tax residency.