

Mr Alain Lamassoure
Member of the European Parliament
European Parliament
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22 February 2016

Dear Mr Lamassoure,

Thank you for your letters to us of 8 February inviting us to have an exchange of views with the TAXE 2 Special Committee at its session on 14-15 March.

Guernsey and Jersey have been seeking to strengthen our engagement with the European Parliament on taxation issues in the past year. As you know, in May 2015, during our visit to Brussels, we met with you in your capacity as Chair of the TAXE 1 Committee. We attended a lunch meeting, kindly hosted by one of your members, to which all members of TAXE 1 were invited and which 8 attended, where we had a valuable informal exchange of views with MEPs from a range of political groupings and nationalities.

We voluntarily made written submissions to TAXE 1 (our letters of 29 and 31 May 2015) explaining why our jurisdictions do not make tax rulings of the sort that TAXE 1 was investigating. We held several individual meetings with TAXE 2 members during our most recent visit to Brussels on 11-13 January. Our officials have maintained contact with the TAXE and ECON Secretariats as well as with the offices of some of your members.

We value this engagement, and we hope that it has been of mutual benefit. We are keen to sustain it and build upon it. We therefore accept your invitation and, as notified already to the Secretariat, we have asked our senior officials responsible for international tax policy to represent Guernsey and Jersey at the session. They are respectively Rob Gray, Director of International Tax in Guernsey, and Colin Powell, adviser on international affairs to the Chief Minister in Jersey. Both have extensive experience.

We are annexing as part of this letter a note summarising the tax cooperation between the Channel Islands and the European Union. We hope that this will be useful background in advance of the Committee's exchange of views with Mr Powell and Mr Gray.

We would draw your attention to the reference in para 10 of the note to the quote from Commissioner Moscovici after his meeting with us on 13 January. The Commissioner stated:

"I very much welcome the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive tax avoidance, in which they are important partners of the EU. Their implementation of the Common Reporting Standard on automatic exchange of information from the 1st January, and their support of the BEPS programme, alongside the EU Member States, are particularly noteworthy and reinforce their standing as cooperative jurisdictions."

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That sense of partnership is certainly how we also see it. The statement also reflects two key principles to which we attach great importance - compliance with relevant international standards and pursuing a good neighbor policy in our relationship with the EU. We hope that the Commissioner's assessment of us as cooperative jurisdictions is one shared by you and the members of your Committee, and we believe that the exchange of views with Mr Powell and Mr Gray will help contribute to this understanding.

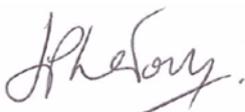
We recognise that one of the matters of current interest of the Committee is the Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation that formed part of the Commission's latest tax package published on 28 January 2016. It may therefore be helpful to summarise ahead of the meeting our position in relation to the recommended "Good Governance Standards in Tax Matters" that are set out in the Annex to the Communication:

- Transparency and exchange of information on request: both Guernsey and Jersey are rated by the Global Forum on Transparency and Exchange of Information for Tax Purposes as largely compliant, a rating shared with amongst others Germany, Italy, the UK and the USA;
- Automatic Exchange of Information (AEOI) of financial account information: both Guernsey and Jersey were "early adopters" of the Common Reporting Standard on AEOI approved by the OECD Council on 15 July 2014, and passed domestic legislation to bring the standard into effect from 1 January 2016;
- Fair tax competition: both Guernsey and Jersey have been assessed by the Code of Conduct Group on Business Taxation and their tax systems were found not to be harmful according to the Code criteria;
- G20/OECD BEPS Standards: both Guernsey and Jersey are committed to the BEPS standards, are taking early action on Country by Country Reporting (BEPS Action 13) and are participating in the Ad Hoc Group on the multilateral instrument to implement the tax treaty-related BEPS measures;
- Other relevant standards: both Guernsey and Jersey have recently been assessed by Moneyval and the level of compliance with the international standards of AML/CFT compares most favourably with that of the EU Member States, and particularly so regarding the identification of beneficial owners of legal persons and legal arrangements.

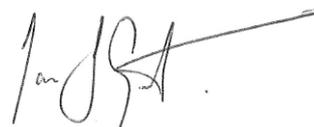
The annex provides summary details of our corporate tax systems, but more extensive details were provided in our written submissions to TAXE 1 of May 2015 which you may wish to re-circulate.

As your letter to us was published on the TAXE 2 website, we request that this reply and its annex should also be published on the same website.

Yours sincerely,



Deputy Jonathan P Le Tocq
Chief Minister
States of Guernsey



Senator Ian Gorst
Chief Minister
Government of Jersey

ANNEX TO THE LETTER OF 22 FEBRUARY 2016 FROM THE CHIEF MINISTERS OF GUERNSEY AND JERSEY
TO THE CHAIR OF THE EUROPEAN PARLIAMENT'S TAXE 2 COMMITTEE

THE CHANNEL ISLANDS AND THE EUROPEAN UNION

TAX AND REGULATORY COOPERATION

Introduction

1. The Channel Islands (“the Islands”) consist of the Bailiwicks of Guernsey and Jersey. They are British Crown Dependencies. They are not part of the United Kingdom, but the UK has ultimate responsibility for their external affairs and defence. The Islands enjoy a high degree of autonomy, including their own fiscal and judicial systems, and receive no financial subsidy from the UK or the EU. By virtue of Protocol 3 of the UK’s Accession Treaty, the Islands are part of the Customs Union and within the Single Market for the purposes of trade in goods, but are third countries in all other respects.

The Channel Islands as international financial centres

2. Both Guernsey and Jersey are significant net providers of liquidity and investment funds to the European economy, as has been demonstrated by various independent studies. For both Islands combined the level of banking deposits is around £215 billion and of funds is around £443 billion (September 2015 data). These deposits and funds are drawn into the UK and the rest of Europe largely from the rest of the world and the Islands’ marketing efforts are directed at increasing this flow from the Far East, Gulf and other wealth creating countries outside of Europe.

Tax policy in the Channel Islands

3. Public finances around Europe remain under pressure and EU Member States are seeking to maximise tax revenues, including by reducing tax evasion and fraud, and to prevent abusive tax avoidance. The Chief Ministers of Guernsey and Jersey have both made clear that the Islands have no desire or need to harbour abusive schemes and will continue to work with international tax authorities to eliminate them.
4. The Islands have the same need as EU Member States to protect their public finances, which are also totally dependent on direct and indirect taxation regimes designed to meet the domestic economic needs of each jurisdiction. For individuals the standard and maximum rate of tax is 20%. Since 2008 the standard corporate rate of tax has been 0%, certain financial service activities are taxed at 10% and utilities (e.g. providers of telephone services) and companies deriving income from an interest in local property are taxed at 20% (as are large retailers in Guernsey, from 2016).
5. The tax policy of each Island is underpinned by strong general anti-avoidance rules (GAAR). In addition there are no allowances or exemptions of the sort found in many other countries which have the effect of producing effective rates of corporate tax much lower than the headline rate. With their relatively simple tax structures the Islands also have no call for tax rulings of the kind found in many other jurisdictions.
6. The standard rate of 0% corporate tax is based on two key principles. One is the Code Group principle of non-discrimination between resident and non-resident owned companies. The other is the principle of tax neutrality combined with transparency. As international finance centres, Guernsey and Jersey act as “financial entrepôts” in facilitating the investment of funds drawn from around the world into European financial markets. The return to the investors should be taxed in their home

country and the business activity generated by the investment in Europe should be taxed in the jurisdiction where that activity takes place.

7. Because Guernsey and Jersey do not have many Double Taxation Agreements (DTAs) with EU Member States, there is a need to adopt a tax neutral regime to avoid discouraging these investment flows which contribute to jobs and growth in the EU. The Guernsey and Jersey governments recognise however that for tax to be levied where it is properly due it is necessary for the countries concerned to have information to help them with their tax assessments.
8. With this in mind Guernsey and Jersey have given their full support for the transparency principles central to the current G20, OECD and EU tax initiatives. The Islands have common cause with the EU in tackling tax evasion, fraud and aggressive tax avoidance and believe these objectives are best achieved by working in partnership, as part of the wider international community, in the development and effective implementation of internationally agreed standards, including those set by the Financial Action Task Force (FATF) and the OECD.
9. It should be noted in this regard that the OECD Convention was extended to Guernsey and Jersey in 1990 and they are part of the UK for the purposes of its membership of the OECD. OECD Decisions and Recommendations apply to Guernsey and Jersey to the same extent as they do to the UK unless the contrary is specifically stated in a particular case.

The Channel Islands as partners of the international community

10. The Islands believe they have shown themselves by their actions to be reliable, active and cooperative partners of the EU and of the wider international community. This idea of partnership was shared by Pierre Moscovici, the EU Commissioner for Economic and Financial Affairs, Taxation and Customs. After meeting with the Chief Ministers of Guernsey and Jersey on 13 January 2016, the Commissioner commented publicly:

"I very much welcome the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive tax avoidance, in which they are important partners of the EU. Their implementation of the Common Reporting Standard on automatic exchange of information from the 1st January, and their support of the BEPS programme, alongside the EU Member States, are particularly noteworthy and reinforce their standing as cooperative jurisdictions."

The development of cooperation with the EU

10. The cooperation with the EU goes back to 2003 when the Islands voluntarily committed to the EU's Code of Conduct on Business Taxation. The Guernsey and Jersey corporate tax regimes have both been assessed by the Code peer review process (most recently Jersey in 2011, and Guernsey in 2012). The rollback measures to remove the harmful elements identified by the Group were speedily implemented to ensure continuing compliance of the regimes with the Code.
11. In 2004 Guernsey and Jersey also voluntarily entered into automatic information exchange and bilateral withholding arrangements respectively with all Member States under the EU Savings Directive (EUSD) and they each have many Tax Information Exchange Agreements (TIEAs) and Double Taxation Agreements (DTAs) signed. All are in force with the exception of those that are waiting for ratification by the partner jurisdiction, and a small number that have been recently signed. The policy being pursued is to complete negotiations and sign agreements with all G20, OECD and EU Member States.

Automatic exchange of information

12. Guernsey and Jersey committed in May 2013 to join the initiative of the G5 countries on establishing and piloting an international standard for automatic exchange of information (AEOI) between tax authorities. In late 2013 they signed intergovernmental agreements (IGAs) with the US (under FATCA) and with the UK (based on FATCA). They acceded to the Council of Europe/OECD Multi-lateral Convention on Mutual Administrative Assistance in Tax Matters in 2014.
13. Building on the G5 initiative, the Islands joined in the joint statement on 19 March 2014 committing to the early adoption of the global Common Reporting Standard (CRS) on AEOI with the first exchange of information in relation to new accounts and pre-existing individual high value accounts taking place by the end of September 2017. Guernsey and Jersey have been closely involved in progressing this work under the auspices of the OECD (Jersey is a vice-chair of the AEOI working group of the Global Forum on Tax Transparency, of which Guernsey is also a member. Jersey is also vice-chair of the Peer Review Group of the Global Forum, and from the end of 2016 this responsibility will pass to Guernsey).
14. On 29 October 2014 Guernsey and Jersey were among over 50 jurisdictions to sign the Multilateral Competent Authority Agreement (MCAA) in Berlin as a further step towards implementation of the CRS. Following the repeal of the EUSD by the EU on 10 November 2015, the existing arrangements between the Islands and EU Member States under the EUSD, which are limited to the interest income of individuals, will therefore be replaced by automatic exchange of information under the CRS in respect of a much wider range of entities and financial information.
15. Guernsey and Jersey sent letters to all Member States within one week of the repeal of the EUSD to confirm the suspension of the bilateral EUSD arrangements and to give the required notice of their termination, and to confirm the move to AEOI under the CRS from 1 January 2016 (with first exchange by September 2017, except in the case of Austria which will be one year later). Domestic legislation implementing the CRS was in force in both Islands by the end of 2015.
16. The Chief Ministers of Guernsey and Jersey met with the Chair of the European Parliament's special Committee on tax rulings (TAXE 1) in May 2015 and both Islands voluntarily provided written submissions to the Committee. As defined by the European Commission, Guernsey has made no tax rulings since the new corporate tax regime was introduced in 2008, and Jersey has made six over the same period which might be considered to meet the conditions (for example rulings have been made on whether or not financial services fall within the definition of services regulated by the Jersey Financial Services Commission which then defines for the purposes of the Regulations whether the profits fall within the scope of the 10% or the 0% rate of corporate tax).

National blacklists

17. Some EU Member States include within their tax legislation a list of third country jurisdictions in regard to whom the Member State applies predefined tax measures or tax policies (eg a higher rate of withholding tax or enhanced due diligence procedures by financial institutions). These so-called "national blacklists" are based on assorted criteria – in some cases linked to rates of taxation and in other cases to non-cooperation (itself defined in different ways – most commonly linked to the existence of a TIEA or similar exchange of information instrument).
18. The Commission, in its Recommendation to Member States of December 2012, defined good governance in tax matters by third countries in relation to adherence to international standards of transparency and cooperation, and the absence of harmful tax measures as set out in the EU's Code of Conduct. The Commission recommended that Member States should remove jurisdictions from their national blacklists which meet these good governance standards.

19. With the combination of Agreements for Exchange of Information on Request, support for AEOI as an “early adopter” of the CRS, and general support for international tax initiatives and the EU principles of good governance, Guernsey and Jersey believe there are no grounds for their inclusion in any black lists of so-called “non-cooperative jurisdictions”. They are actively working with those Member States that still include them on their national list to achieve de-listing.
20. The Islands believe that jurisdictions identified by Member States solely on the basis of Controlled Foreign Corporation (CFC) legislation, or the need for enhanced reporting obligations based on tax rates, cannot be regarded as “black listed”. In this regard, it should also be recalled that the OECD itself has confirmed that “low or no taxation” is not of itself harmful – it is only harmful if it is discriminatory and is combined with lack of transparency and information exchange.

A common EU list

21. On 17 June 2015 as part of its Action Plan on corporate taxation, the European Commission published a consolidated list of third country jurisdictions based on data supplied by Member States on their national blacklists under the title “non-cooperative tax jurisdictions” despite the fact that, as noted above, in many cases these national blacklists are based on criteria other than cooperation and despite the Commission’s own Recommendation to Member States of December 2012 about what constituted tax good governance.
22. Both Guernsey and Jersey fully shared the widespread criticism of the Commission’s methodology. They welcomed the updated, corrected and retitled version published by the Commission on 12 October 2015 and further revised on 28 January 2016 (“Tax good governance in the world as seen by EU countries”). The updated version also no longer takes the form of a list.
23. In this regard, Guernsey and Jersey have noted with interest the external tax strategy published by the Commission on 28 January, including the proposal to establish agreed EU wide criteria for good governance standards in tax matters, based on objective, transparent criteria related to: transparency and exchange of information; fair tax competition; and G20/OECD BEPS standards.
24. A screening of third countries, as proposed by the Commission, on the basis of such criteria agreed by all Member States, would result in agreed EU lists of third countries that do and do not meet these criteria. Provided that both the criteria and the screening process is objective, transparent and evidence based, Guernsey and Jersey welcome it and have nothing to fear from it.
25. A genuine EU list of this nature, in contrast to the aggregation of national lists published by the Commission last year, would be an improvement. It would be particularly welcome if it resulted in the progressive disappearance of the various national lists maintained by Member States, based on assorted criteria.

Base erosion and profit shifting (BEPS)

26. The Chief Ministers of Guernsey and Jersey have expressed clear and full support for the actions being taken under the BEPS project to reach a globally fair and modern international tax system and the call in the G20 Antalya Leaders’ Summit Communique encouraging all countries and jurisdictions to participate in the timely implementation of the project.
27. The Islands are watching closely the action being taken by members of the G20, the OECD and the EU to implement BEPS, particularly in respect of those parts of the package of measures developed under the BEPS project which are of greatest relevance for the Islands. The Islands therefore welcome the publication by the Commission on 28 January of a draft “EU BEPS Directive” to implement into EU law many of the BEPS actions.

28. Guernsey and Jersey are currently consulting (in Jersey through a public consultation, in Guernsey through industry consultation) on the introduction of legislation to implement into domestic law the OECD standard for extending the scope of AEOI to exchange of information between tax authorities on country by country reporting (CBCR) by large corporations. In the EU this will be implemented through the proposed further amendment to the Administrative Cooperation Directive (DAC4) also published by the Commission on 28 January. Subject to the outcome of the consultations, Guernsey and Jersey would also then intend to sign the OECD multilateral CBCR instrument that opened for signature on 27 January 2016.
29. Guernsey and Jersey are members of the OECD ad hoc working group that is developing the multilateral treaty to implement BEPS treaty related measures and amend bilateral treaties.

Anti-Money Laundering and beneficial ownership

30. Guernsey and Jersey have both been assessed as being amongst the best quality financial centres in the world when measured against the rigorous international standards for tackling money laundering and terrorist financing set by the FATF. Both Islands have had tax crimes as a predicate offence for anti-money laundering purposes for more than a decade. Both Islands have recently been reviewed by MONEYVAL. The Guernsey assessment was published in January 2016 and the Jersey report is expected to be published by March. Moneyval reports can be found on <https://www.coe.int/t/dghl/monitoring/moneyval>
31. The Islands have been internationally recognised as leaders in the provision of accurate, adequate and timely information on the beneficial ownership of companies (for example the World Bank expressed this view in connection with its Stolen Asset Recovery (StAR) project). This position is also reflected in the roles the Islands play in the work of the European Business Registry. The Islands have joined with the G8, following its Summit in June 2013, in making clear publicly their commitment to further strengthening the procedures already in place on beneficial ownership to prevent the misuse of companies and legal arrangements, and have published action plans.
32. The Islands are committed to compliance with FATF Recommendations 24 and 25 on transparency and beneficial ownership of legal persons and legal arrangements, reflected also in the EU 4th AML Directive.
33. With respect to trusts and companies, Guernsey and Jersey have had legislation in place to regulate Trust and Company Service Providers (TCSPs) since 2000 and such persons are required to hold, and keep up to date, beneficial ownership information for all structures administered by the TCSPs. That information is then available to the financial regulator and law enforcement authorities and can be provided to competent authorities in other jurisdictions using gateways provided for in the legislation, as well as under the Islands' tax agreements.

Financial regulation

34. Guernsey and Jersey have robust and internationally respected systems of financial regulation. Banking secrecy does not exist in Guernsey or Jersey and, as noted above, both Islands are world leaders in the regulation of trust providers.
35. The Financial Stability Board (FSB) in November 2011 published the result of its assessment of jurisdictions' adherence to regulatory and supervisory standards on international cooperation and information exchange. Jurisdictions were placed in one of three groups, depending on their level of adherence and Guernsey and Jersey were placed in Group 1, the top group, which consists of those jurisdictions "demonstrating sufficiently strong adherence to the relevant international standards". This Group 1 status was re-confirmed in the 2013 update report published by the FSB.

36. The Islands' financial regulators have developed excellent regulatory cooperation with their EU counterparts, including with the new European Supervisory Authorities. Guernsey and Jersey were among the first jurisdictions whose regulators concluded Memoranda of Understanding with most EU/EEA states with respect to market access for national private placement regimes under the Alternative Investment Fund Managers Directive (AIFMD). These memoranda were negotiated by the European Securities and Markets Authority (ESMA).
37. In July 2015 ESMA recommended to the Commission that passporting under AIFMD should be extended to Guernsey and Jersey – together with Switzerland, the only third country jurisdictions to have so far received a positive recommendation. In August 2015 Guernsey adopted domestic legislation which unilaterally extends market access in Guernsey to EU firms from those EU Member States that have implemented AIFMD.

Tax and development

38. The Islands recognise the importance of tax issues for the international development agenda. They are actively exploring ways of helping developing countries to enhance their revenue raising capacity, working in collaboration with other international partners. Both Islands have put in place legislation designed to stop creditors, including so-called "Vulture Funds", from pursuing inequitable payments from "heavily indebted poor countries" (as defined by the IMF/World Bank) through the Guernsey and Jersey courts.
39. They are actively engaged in international efforts to help developing countries recover assets illicitly moved out of their countries. Channel Islands authorities have assisted in prosecutions affecting jurisdictions as diverse as Brazil, Kenya, Indonesia, Nigeria, Norway, Denmark, South Africa and the United States, resulting in significant restraint of assets or their confiscation and repatriation.
40. Notable examples are Jersey's identification and return of over US\$160 million to the Nigerian Government, following investigation into corruption involving General Abacha, and the case of Garnet in Guernsey, which is preventing the transfer of EUR 36m related to Tommy Suharto of Indonesia, and which the Guernsey authorities successfully defended under judicial review.
41. An independent report in 2014 ("Jersey's value to Africa" by Capital Economics) highlighted the important role that the Islands can and are playing by providing a safe and well-regulated business environment which can facilitate access to the investment funds which Africa needs to fulfil its economic potential.

22 February 2016