Consultation on the introduction of substance requirements for companies tax resident in Jersey

Closing date for comments: 31 August 2018

States of Jersey
Taxes Office
2017

Foreword

Jersey is one of the most stable and successful international finance centres in the world. We are committed as a Government, and as a jurisdiction, to the highest standards of tax transparency and financial regulatory compliance and to the promotion and protection of the Island's well-deserved reputation.

Successive international assessments by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and by MONEYVAL have confirmed the Island's leading position. Jersey also has a well-established record as an early adopter of international standards, including the OECD's Common Reporting Standard (CRS) and through the Island's early commitment to participating in the OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS).

In addition to supporting international standards on tax transparency and good governance, Jersey has also pursued a long-standing 'good neighbour' policy towards the European Union. Jersey voluntarily committed to the EU's Code of Conduct Group on Business Taxation in 2003 and the Code review process assessed the Island's corporate tax regime as compliant in 2011.

Throughout 2017, the EU Code of Conduct Group (Business Taxation) conducted an intensive screening process where the tax structures of over 90 jurisdictions were subject to detailed analysis. In December 2017, EU Finance Ministers (ECOFIN) decided to include a number of jurisdictions on an EU list of non-cooperative tax jurisdictions. ECOFIN Ministers identified Jersey as a cooperative tax jurisdiction.

As part of ongoing dialogue with the EU over the 'listing process', the Government of Jersey made a number of commitments to address concerns raised by the EU Code Group in relation to a need for businesses in the Island to demonstrate economic substance in the jurisdiction. The proposals in this consultation paper constitute the Government of Jersey's legislative response to addressing these concerns.

This consultation paper follows many months of internal preparations, involving engagement with industry representatives (including through Jersey Finance Ltd) and the Jersey Financial Services Commission. It has also involved external dialogue with representatives of the EU Code of Conduct Group, OECD officials, and the EU Commission in order to obtain the clarity needed on the EU's expectations of jurisdictions, particularly on matters of economic substance. The Government of Jersey has engaged actively and constructively at every stage of this process, in line with the Island's position as a fully cooperative jurisdiction. The Government of Jersey has delivered a cross-government response to this important work, as is reflected in this joint Ministerial foreword.

The consultation paper is intentionally high-level. The Government of Jersey's overall proposed policy approach takes as its basis the Scoping Document published by the EU Code Group containing guidance for jurisdictions who had made commitments such as Jersey's. The Scoping Document in turn references the application of the methodology adopted by the OECD's Forum on Harmful Tax Practices with its focus on a sector-by-sector assessment of what economic substance means. It will also involve annual reporting, monitoring and the implementation of an effective compliance regime.

This paper contains a balance of proposed policy measures – where we have obtained the requisite clarity from EU stakeholders – together with a series of questions, where we are seeking further clarity. It is worth noting, however, that the timetable for developing and implementing the proposed legislative changes is extremely tight. This is because the EU has

set a deadline of 31 December 2018 for delivery of the commitments jurisdictions made to address EU Code of Conduct Group concerns.

Our Island is one of a number of jurisdictions that have been engaged in dialogue with the EU as part of the 'listing process.' The Government of Jersey continues to work in lockstep with the governments of the other Crown Dependencies to ensure a fully coordinated and consistent approach to the development and delivery of this policy.

Jersey's financial services industry is the engine of the Island's prosperity. In a fast-moving and competitive environment, it is therefore essential that the Government of Jersey continues to play a full role in shaping and implementing international standards. This requires agility, flexibility and creativity. The consultation on these policy proposals represents the latest step in the evolution of the Island's international tax policy – and maintains our longstanding commitment to tax neutrality combined with transparency and the requirement that regulated financial institutions have a real physical presence in the Island and are of substance. We strongly welcome input from industry practitioners and members of the public on these proposals.

Senator Ian Gorst, Minister for External Relations

Deputy Susie Pinel, Minister for Treasury and Resources

1. Purpose of this consultation document

1.1. This consultation document is being issued to seek feedback from key stakeholders (including companies, industry associations, practitioners and any other interested parties) on the actions required in order for the Government of Jersey to address concerns raised by the EU's Code of Conduct Group (Business Taxation) ("the COCG") regarding economic substance.

1.2. The Government of Jersey is seeking feedback, comments and suggestions on the outline proposal contained within this consultation document and how the actions within the outline proposal can be implemented. They draw on thinking within the OECD and EU relating to economic substance, as well as looking at legal and regulatory requirements that already exist in Jersey.

1.3. This consultation is designed to seek feedback on the outline proposal so as to inform drafting of the relevant laws and allow government to ensure a smooth transition for companies carrying on relevant activities.

1.4. The closing date for submissions is **Friday 31 August 2018**.

2. Background

2.1. On 1 December 1997, the Council of the European Union adopted a resolution on a Code of Conduct for business taxation with the objective to curb harmful tax competition[1]. In 1998 the COCG was set up to assess tax measures and regimes that may fall within the scope of the Code of Conduct for business taxation.

2.2. In 2017 the COCG investigated the tax policies of countries, in and out of, the European Union ("EU") in order to reinforce the EU's view of itself as a leader for the setting of global standards on tax matters. As part of the associated screening process jurisdictions were assessed against the following tax good governance criteria[2]:

i) tax transparency,
ii) fair taxation, and
iii) implementation of anti–BEPS measures

2.3. No concerns were raised by the COCG regarding Jersey's standards of tax transparency and implementation of anti-BEPS measures.

2.4. Jersey was compliant with the general principles of "fair taxation" as its business tax regime had been assessed against the Code of Conduct for business taxation and determined non-harmful in 2011.

[1] Relevant extracts from the Code of Conduct for business taxation have been reproduced in Appendix A.
[2] The full detail of the tax good governance criteria has been reproduced in Appendix B.

2.5. As part of the screening process, jurisdictions with low or zero rates of corporate income tax were also assessed against criterion 2.2[3] which applied the Code of Conduct for business taxation criteria by analogy[4]. Following this screening process the COCG expressed concern that Jersey did not have a "*legal substance requirement for entities doing business in or through the jurisdiction*". The COCG were concerned that this "*increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial economic presence*".

2.6. These concerns were articulated in a letter to the Government of Jersey in November 2017. In response Jersey made a commitment to address these concerns by the end of December 2018. The Chief Minister made a statement to the States Assembly in December 2017 updating States Members and providing a copy of the letter sent to the Chair of the COCG containing the commitment made by the Government of Jersey[5].

2.7. Jersey was placed in Annex II of the list of jurisdictions produced by the Code Group for ECOFIN in December 2017[6]. Annex II lists jurisdictions that were identified as raising concerns but made commitments to address and resolve them. Within Annex II Jersey is listed under criterion 2.2, which states that the jurisdiction committed to address concerns relating to the economic substance of companies tax resident in Jersey. The jurisdictions listed under criterion 2.2 have become colloquially known as the "2.2 jurisdictions".

2.8. Identical concerns were raised in respect of Guernsey and the Isle of Man, and so the Crown Dependencies have been working closely together to develop proposals which aim to meet the commitment.

2.9. In order to meet its commitment to address and resolve the identified concerns, the Government of Jersey has been exploring the potential impact of imposing substance requirements in Jersey.

2.10. In response to requests from the 2.2 jurisdictions for technical guidance on how to comply with criterion 2.2, on 22 June 2018 the COCG published a Scoping Paper on criterion 2.2[7] ("the Scoping Paper").

2.11. The Government of Jersey has also engaged closely with the OECD through the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Inclusive Framework on BEPS and a specific voluntary group established to progress discussions

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[3] Criterion 2.2 of the tax good governance criteria states: "The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction."

[4] Details of how the Code of Conduct for business taxation is applied by analogy in this context are contained in Annex VII "Scope of criterion 2.2" and "Terms of reference for the application of the Code test by analogy" in this document: http://data.consilium.europa.eu/doc/document/ST-15429-2017-INIT/en/pdf.

[5] See: https://statesassembly.gov.je/assemblystatements/2017/2017.12.11%20chief%20minister%20-%20eu%20'blacklist'%20of%20non-cooperative%20jurisdictions%20for%20tax%20purposes%20consolidated.pdf

[6] See: http://data.consilium.europa.eu/doc/document/ST-15429-2017-INIT/en/pdf. A consolidated and up-to-date version of the report is available at: http://www.consilium.europa.eu/media/35567/st_6236_2018_rev_3_en.pdf.

[7] The content of the Scoping Paper on criterion 2.2 has been reproduced in Appendix C.

on the issue of economic substance. This is particularly relevant as the Scoping Paper broadly asserts "that those expected substance requirements should mirror those used in the [OECD's] FHTP in the context of preferential regimes".

2.12. FHTP guidance on substance requirements in the context of preferential regimes can be found in the "Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report"[8] and the "Harmful Tax Practices - 2017 Progress Report on Preferential Regimes"[9].

2.13. The Government of Jersey has been working closely with the governments of the Isle of Man and Guernsey to collectively develop proposals to address the concerns raised by the COCG. This work has included dialogue with the European Commission (Taxation and Customs Union - TAX UD) and the COCG both in plenary sessions (with other jurisdictions) and bilateral meetings. This engagement is ongoing. Discussions have also taken place with individual EU Member States and this work is coordinated by the Channel Islands Brussels Office, and with the OECD Global Forum and the FHTP.

[8] See: http://www.oecd.org/ctp/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance-action-5-2015-final-report-9789264241190-en.htm
[9] See: http://www.oecd.org/tax/beps/harmful-tax-practices-2017-progress-report-on-preferential-regimes-9789264283954-en.htm

3. Summary of outline proposal

3.1. The outline proposal developed by the Crown Dependencies to address the concerns of the COCG consists of three distinct stages:

- Stage one: identify companies carrying on relevant activities
- Stage two: impose substance requirements on companies undertaking relevant activities
- Stage three: enforce the substance requirements

3.2. Further details of each of these stages and associated questions are provided in sections 4 – 9 below.

3.3. It is anticipated that the outline proposal will apply for the 2019 year of assessment, to include all companies with accounting periods beginning on or after 1 January 2019. It is further anticipated that the substance requirements will be primarily introduced through the Income Tax Law; with the Comptroller overseeing compliance. It is envisaged that the corporate income tax return process in relation to the 2019 year of assessment[10] will be enhanced to enable companies to report relevant information electronically and facilitate the Comptroller's ability to oversee compliance and continued monitoring.

Question [1]: what steps can the Taxes Office take to improve the electronic filing of corporate income tax returns?

3.4. It is anticipated that the minimum information that companies carrying on "relevant activities" will be required to submit through their corporate income tax return for the 2019 year of assessment onwards is:

- business activity;
- amount and type of gross income;
- amount and type of expenses and assets;
- premises; and
- number of employees, specifying the number of full time (equivalent) employees

Question [2]: what challenges do you anticipate in relation to the filing of this information through future corporate income tax returns? What can the Taxes Office do to help address these challenges?

4. Stage one: identify companies carrying on "relevant activities"

4.1. Stage one of the outline proposal requires the identification of "relevant activities". "Relevant activities" have been derived from the categories of geographically mobile income identified by the FHTP as follows:

- Banking
- Insurance

[10] Consistent with the consultation process entered into by the Comptroller of Taxes earlier this year, it is anticipated that changes will be made to corporate income tax return for the 2018 year of assessment in order to collect additional information (including business activity and profits) from all companies with a taxable presence in Jersey.

- Fund Management
- Financing & Leasing
- Headquarters
- Shipping
- Holding Company Activities
- Intellectual Property

4.2. It is acknowledged that detailed guidance will be required in order to allow companies to identify whether they are carrying on "relevant activities".

Question [3]: what challenges do you anticipate in relation to the identification of companies carrying on "relevant activities"? What can the Government of Jersey do to help address these challenges?

5. Stage two: impose substance requirements on companies undertaking relevant activities

5.1. Listed below are some substance requirements which could be imposed via amendments to the Income Tax Law on companies undertaking relevant activities. Please assess the options available and indicate how challenging it would be for your company to demonstrate compliance with these requirements. In a corporate administration context, please assess the options available and indicate how challenging it would be for the companies managed or administered by your company to demonstrate compliance with these requirements (0= easy to demonstrate; 5= unable to demonstrate).

5.2. The term "adequate", which you will see utilised below, is intended to reflect the fact that individual companies have different circumstances. It is intended that public guidance will be developed in due course which will build on any existing regulatory requirements relating to local substance.

6. Substance requirements for companies carrying on "relevant activities" (excluding IP income generating companies)

6.1. Tax Resident Companies carrying on "relevant activities" (excluding IP income generating companies) will be required to demonstrate that the company is directed and managed in Jersey as follows:

- There must be meetings of the Board of Directors in Jersey at adequate frequencies given the level of decision making required;
- During these meetings, there must be a quorum of the Board of Directors physically present in Jersey;
- Strategic decisions of the company must be set at meetings of the Board of Directors and the minutes must reflect those decisions;
- All company records and minutes must be kept in Jersey; and
- The Board of Directors, as a whole, must have the necessary knowledge and expertise to discharge their duties as a board.

Question [4]: how challenging will it be for companies carrying on "relevant activities" to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

6.2. Demonstrating the existence of Core Income Generating Activities ("CIGA") in Jersey (either by the company or a third party), may include the following (shown against each relevant activity):

- Banking - raising funds, managing risk, taking hedging positions, providing loans, credit or other financial services for customers, managing regulatory capital, preparing regulatory reports and/or returns
- Insurance - predicting and calculating risk, insuring or re-insuring against risk, providing client services
- Fund Management - taking decisions on the holding and selling of investments, calculating risks and reserves, taking decisions on currency, interest fluctuations and/or hedging positions, preparing relevant regulatory and/or other reports for government authorities and investors
- Financing and leasing - agreeing funding terms, identifying or acquiring assets to be leased (in the case of leasing), setting the terms and duration of acquiring assets to be leased (in the case of leasing), monitoring and revising agreements, managing any risk
- Headquarters - taking relevant management decisions, incurring expenses on behalf of group entities, co-ordinating group activities
- Shipping - managing the crew (including hiring, paying and overseeing crew members), hauling and maintaining ships, overseeing and tracking deliveries, determining what goods to order and when to deliver them, organising and overseeing voyages
- Holding Company Activities - Companies which purely hold equities will need to confirm they meet all applicable corporate law and tax filing requirements, where holding companies also conduct other "relevant activities" they will additionally be subject to the requirements associated with that activity.

Question [5]: how challenging will it be for companies carrying on "relevant activities" to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

6.3. Companies carrying on "relevant activities" will be required to demonstrate that there is:

- an adequate level of (qualified) employees in Jersey, or adequate level of expenditure on outsourcing to service companies in Jersey proportionate to the activities of the company;
- an adequate level of annual expenditure incurred in Jersey, or adequate level of expenditure on outsourcing to service companies in Jersey, proportionate to the activities of the company; and
- adequate physical offices and/or premises in Jersey, or adequate level of expenditure on outsourcing to service companies in Jersey, for the activities of the company

Example: ABC Leasing Ltd, has a relevant activity of leasing, its Board of Directors meet in Jersey, and set the strategic direction of the business and monitor the risks and outcomes.

Rather than just having their own employees, premises, etc. in Jersey, they also outsource a substantial part of their day to day leasing operations to XYZ Lease Services Ltd. This company has qualified finance staff in Jersey, in its own Jersey premises, and incurs various

expenses related to conducting business for ABC Leasing Ltd. The expenditure of ABC Leasing Ltd with XYZ Lease Services Ltd will be treated as representing ABC Leasing Ltd having equivalent suitable staff, premises and expenditure in Jersey.

Question [6]: how challenging will it be for companies carrying on "relevant activities" to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

7. Enhanced substance requirements for IP income generating companies

7.1. Tax resident companies with income from intellectual property ("IP") will be required to:

- Demonstrate they are directed and managed in Jersey (noting that periodic decisions of non-resident board members would not be sufficient in this context);
- Carry on IP CIGA in Jersey;
- Have adequate levels of (qualified) employees in Jersey;
- Have adequate level of annual expenditure incurred in Jersey; and
- Have adequate physical offices and/or premises in Jersey.

7.2. To demonstrate that a company with income from IP is directed and managed in Jersey will include demonstrating the following:

- There must be meetings of the Board of Directors in Jersey at adequate frequencies given the level of decision making required;
- During these meetings, there must be a quorum of the Board of Directors physically present in Jersey;
- Strategic decisions of the company must be set at meetings of the Board of Directors and the minutes must reflect those decisions;
- All company records and minutes must be kept in Jersey; and
- The Board of Directors, as a whole, must have the necessary knowledge and expertise to discharge their duties as a board.

7.3. To demonstrate IP Core Income Generating Activities in Jersey may include demonstrating the existence in Jersey of:

- Research and development
- Marketing
- Branding
- Distribution
- Strategic decisions and managing principal risks
- Carrying on underlying trading activities within Jersey

Question [7]: how challenging will it be for IP income generating companies to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

7.4. Where IP was acquired through a related party and is licensed to foreign related parties there will be a rebuttal presumption that the company fails the substance requirement, unless the following can be provided:

- Business plans
- Employee information
- Evidence of decision making within Jersey

- That there is an adequate level of (qualified) employees within the company or a related party within Jersey (noting it will not be deemed adequate for non-resident board members to make periodic decisions at board meetings in Jersey without the company employing local, permanent, qualified staff)
- Demonstrating an adequate level of expenditure proportionate to the level of activity in Jersey
- Having adequate physical offices / premises in Jersey for the activities undertaken

7.5 Whilst the above presumption of a lack of substance is rebuttable and there will not be financial sanctions if it is rebutted, the Comptroller will still seek to exchange information with relevant EU member states, given the high risk these scenarios create.

Question [8]: how challenging will it be for IP income generating companies where IP was acquired from, and licenced to, related parties, to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

8. Substance requirements for Collective Investment Vehicles (CIVs) / Funds structured as companies

8.1. It is recognised that reduced substance requirements should apply to CIVs as they differ from other companies with geographically mobile income. The reduced substance requirements will be aligned with the regulatory framework in Jersey.

Question [9]: do you consider there are any other activities carried out by CIVs that would further enhance the ability for CIVs to demonstrate substance in Jersey?

9. Stage three: enforce the substance requirements

9.1. In order to demonstrate meaningful enforcement of any proposed substance requirements the Comptroller will need to be able to take enforcement action against companies that fail to comply with the applicable substance requirements. It is envisaged that this will operate via a formal hierarchy of sanctions for non-compliant companies with increasing severity of sanctions imposed for persistent non-compliance.

9.2. A proposed hierarchy of sanctions is outlined below. Please provide a score of 0 – 5 on how reasonable and proportionate you feel each of these measures are (0= reasonable and proportionate; 5 = highly unreasonable and/or disproportionate):

Trigger event 1: failure of submission of tax return or incomplete disclosure of substance information

Sanction:

- Rejection of return as incomplete, and failure to file financial penalties
- Continued non-disclosure will result in a formal detailed audit or request for additional information against substance requirements.
- Failure of audit will result in the issue of notification of non-compliance, details of the areas where remedial measures are required and a deadline for compliance

Question [10]: how reasonable and proportionate do you consider this sanction to be? (0= reasonable and proportionate; 5 = highly unreasonable and/or disproportionate)

Trigger event 2: Failure to meet substance requirements via disclosure or audit

Sanctions:

- Financial penalties which could be based on those that apply to entities that fail to comply with other international standards implemented in the jurisdictions such as providing inaccurate Common Reporting Standard returns.
- Details of areas requiring remedial action and the deadline for compliance.

Question [11]: how reasonable and proportionate do you consider this sanction to be? (0= reasonable and proportionate; 5 = highly unreasonable and/or disproportionate)

Trigger event 3: Persistent non-compliance and failure to enact remedial measures

Sanctions:

- Strike off from the register of Jersey companies or notification to the tax administration in the jurisdiction of incorporation of the failure

Question [12]: how reasonable and proportionate do you consider this sanction to be? (0= reasonable and proportionate; 5 = highly unreasonable and/or disproportionate)

Trigger Event 4: Any of the above

Sanctions:

- The Comptroller may spontaneously exchange information concerning the company with any EU Member State in which the company's immediate and ultimate parent entity is tax resident
- Report to appropriate regulatory authority regarding the lack of adherence to local legislative requirements for regulated entities

10. Further Transparency Measures – Beneficial Ownership & Mandatory Disclosure Rules

10.1. The Scoping Paper also outlined two additional transparency measure requirements relating to (i) beneficial ownership information; and (ii) mandatory disclosure rules.

10.2. The Government of Jersey shares the view of the COCG that the need for accurate and accessible beneficial ownership information is part of the international tax and anti-money laundering standards, and Jersey already has existing high standards in place in this regard.

10.3. Jersey has an established track record of sharing verified and accurate beneficial ownership information with law enforcement and taxation authorities.

10.4. The Government of Jersey plans to build on political commitments made in 2016[11] by working with the EU to ensure that legal and beneficial ownership information in relation to bodies corporate is able to be appropriately shared in a real-time or close to real time manner with tax and law enforcement authorities on a reciprocal basis. This would be subject to ensuring appropriate data safeguarding measures are in place.

Question [13]: Please provide any feedback you have in respect of this aspect of the outline proposal.

10.5. The Government of Jersey plans to introduce legislation for mandatory disclosure by 31 December 2019 (the timescale that countries within the EU are working towards)

10.6. The aims of these rules would be to require promoters of avoidance arrangements and service providers to disclose information on the arrangement or structure to the Comptroller. Such information would include the identity of any user or beneficial owner and would then be exchanged with the tax authorities of the jurisdiction in which the users and/or beneficial owners are resident where there is a relevant information exchange agreement..

Question [14]: Please provide any feedback you have in respect of this aspect of the outline proposal.

[11] See: https://www.gov.je/news/2016/pages/lettergeorgeosborne.aspx

11. How to respond to this consultation

To help us process your consultation response please provide the following information:

Question [15]: in what capacity are you responding to this consultation?
Question [16]: do you represent a company(ies) which carry on 'relevant activities' ?
Question [17]: if you are a business, are your customers primarily those which may be within the scope of these proposals ?
Question [18]: if you are answering this consultation on behalf of a specific company or industry, please identify the primary area of business activity.
Question [19]: if you are answering on behalf of an employer please confirm the approximate numbers of employees ?

Thank you for taking the time to consider the issues within this consultation, which will assist to further inform government, and we look forward to receiving your responses.

Responses should be submitted by email to:

Tax.policy@gov.je

With a subject line of: *Consultation on the introduction of substance requirements for companies tax resident in Jersey*

Alternatively, Jersey Finance will be collating an industry response and these responses should be sent to:

Lisa Springate, Head of Technical, Jersey Finance

Email: lisa.springate@jerseyfinance.je

Responses sent to Jersey Finance will be shared with the Government of Jersey unless the respondent indicates that they wish to remain anonymous. Please indicate clearly on your response if this is the case.

This consultation paper has been sent to the Public Consultation Register.

Feedback on this consultation

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please email communications.unit@gov.je.

How we will use your information

The information you provide will be processed for the purpose of consultation. The Comptroller of Tax will use your information in accordance with the Data Protection (Jersey) Law 2018 and the Freedom of Information (Jersey) Law 2011. We may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

Glossary & Key Terms

Annex II, Criterion 2.2: Annex II to the ECOFIN Council conclusions dated 5 December 2017 is a "state of play" document outlining the commitments made by third countries to address concerns raised by the EU Council's Code of Conduct Group on Business Taxation relating to cooperation for tax purposes. The Crown Dependencies, as well as over 50 third countries to the EU have made commitments under Annex II. In respect of the Crown Dependencies, commitments have been made to address concerns raised following assessment under the tax governance criteria established by the Code of Conduct Group. Criterion 2.2 requires jurisdictions to ensure that that they do not facilitate offshore structures which attract profits without economic substance in the form of real economic activity or a substantial economic presence.

BEPS: Base Erosion and Profit Shifting refers to corporate tax planning strategies that artificially "shift" profits from higher-tax to lower-tax jurisdictions. In the context of this document it refers to the OECD initiative to tackle such strategies.

Code of Conduct Group (Business Taxation): Also known as the Code Group – abbreviated to "COCG" in this consultation document. It is a group set up by the Council of the European Union to assess tax measures and regimes that might fall within the scope of the Code of Conduct for business taxation.

ECOFIN: The Economic and Financial Affairs Council configuration of the Council of the European Union. It comprises of Economic and Finance ministers of the EU Member States.

FHTP: The Forum for Harmful Tax Practices ("FHTP") is a group established by the OECD to take forward the OECD's work in relation to harmful tax practices.

OECD: The Organisation for Economic Co-Operation and Development is an intergovernmental economic organisation with 36 member countries, founded in 1961 to stimulate economic progress and world trade.

Outline Proposal: The proposal developed jointly by the three Crown Dependencies (Jersey, Guernsey and the Isle of Man) to meet their commitments to address the EU's concerns regarding economic substance.

Appendix A

Relevant extracts from the Code of Conduct for business taxation

Code of conduct for business taxation tax measures covered

A. Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community.

Business activity in this respect also includes all activities carried out within a group of companies.

The tax measures covered by the code include both laws or regulations and administrative practices.

B. Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code.

Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

When assessing whether such measures are harmful, account should be taken of, inter alia:

1. whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents, or

2. whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base, or

3. whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages, or

4. whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD, or

5. whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.

Appendix B

Tax good governance criteria for screening jurisdictions with a view to establishing an EU list of non-cooperative jurisdictions[12]

The following tax good governance criteria should be used to screen jurisdictions, with a view to establishing the EU list of non-cooperative jurisdictions for tax purposes, in line with the guidelines for the screening. The compliance of jurisdictions on tax transparency, fair taxation and the implementation of BEPS measures will be assessed cumulatively in the screening process.

As regards future screenings, these criteria will be adjusted by the Council, as necessary, having regard to evolution in international standards, future ratings of those standards and the importance of continued and rapid progress by all relevant jurisdictions in these areas.

1. Tax transparency criteria

Criteria that a jurisdiction should fulfil in order to be considered compliant on tax transparency:

1.1. Initial criterion with respect to the OECD Automatic Exchange of Information (AEOI) standard (the Common Reporting Standard – CRS): the jurisdiction, should have committed to and started the legislative process to implement effectively the CRS, with first exchanges in 2018 (with respect to the year 2017) at the latest and have arrangements in place to be able to exchange information with all Member States, by the end of 2017, either by signing the Multilateral Competent Authority Agreement (MCAA) or through bilateral agreements;

Future criterion with respect to the CRS as from 2018: the jurisdiction, should possess at least a "Largely Compliant" rating by the Global Forum with respect to the AEOI CRS, and

1.2. the jurisdiction should possess at least a "Largely Compliant" rating by the Global Forum with respect to the OECD Exchange of Information on Request (EOIR) standard, with due regard to the fast track procedure, and

1.3. (for sovereign states) the jurisdiction should have either:

i) ratified, agreed to ratify, be in the process of ratifying, or committed to the entry into force, within a reasonable time frame, of the OECD Multilateral Convention on Mutual Administrative Assistance (MCMAA) in Tax Matters, as amended, or

ii) a network of exchange arrangements in force by 31 December 2018 which is sufficiently broad to cover all Member States, effectively allowing both EOIR and AEOI;

(for non-sovereign jurisdictions) the jurisdiction should either:

i) participate in the MCMAA, as amended, which is either already in force or expected to enter into force for them within a reasonable timeframe, or

ii) have a network of exchange arrangements in force, or have taken the necessary steps to bring such exchange agreements into force within a reasonable timeframe, which is sufficiently broad to cover all Member States, allowing both EOIR and AEOI.

[12] See: http://data.consilium.europa.eu/doc/document/ST-14166-2016-INIT/en/pdf

1.4. Future criterion: in view of the initiative for future global exchange of beneficial ownership information, the aspect of beneficial ownership will be incorporated at a later stage as a fourth transparency criterion for screening.

Until 30 June 2019, the following exception should apply:

– A jurisdiction could be regarded as compliant on tax transparency, if it fulfils at least two of the criteria 1.1, 1.2 or 1.3.

This exception does not apply to the jurisdictions which are rated "Non Compliant" on criterion 1.2 or which have not obtained at least "Largely Compliant" rating on that criterion by 30 June 2018.

Countries and jurisdictions which will feature in the list of non-cooperative jurisdictions currently being prepared by the OECD and G20 members will be considered for inclusion in the EU list, regardless of whether they have been selected for the screening exercise.

2. Fair taxation Criteria that a jurisdiction should fulfil in order to be considered compliant on fair taxation:the jurisdiction should have no preferential tax measures that could be regarded as harmful according to the criteria set out in the Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a code of conduct for business taxation, and

2.2. The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.

3. Implementation of anti-BEPS measures

3.1. Initial criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures:

- the jurisdiction, should commit, by the end of 2017, to the agreed OECD anti-BEPS minimum standards and their consistent implementation.

3.2. Future criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures (to be applied once the reviews by the Inclusive Framework of the agreed minimum standards are completed):

- -the jurisdiction should receive a positive assessment for the effective implementation of the agreed OECD anti-BEPS minimum standards

Appendix C

Scoping paper on criterion 2.2 of the EU listing exercise

I/ Technical elements of commitments to be fulfilled by the jurisdictions

Issue of lack of substance (Criterion 3 of the Code of Conduct test)

To address the issues that arise in connection with entities operating without any substance, the 2.2 jurisdictions have already been requested by the COCG to:

1) *give reassurances to EU Member States on this issue, in line with the Terms of Reference attached to this letter;* and

2) *discuss with the Code what further steps could better ensure that businesses have sufficient economic substance.*

The letters to these jurisdictions clarified that

"*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*."

In line with the Criterion 2.2 ToR and further discussions held in the context of the COCG, the dialogue with the jurisdictions has started on the basis of the below points:

1) The jurisdiction has provided concrete elements on the steps (including their timeline) envisaged to align their legal system with the ToR on criterion 2.2;

2) The jurisdiction shall guarantee that legal substance requirements will be introduced in the legislation for the incorporation and operation of entities making sure that in practice tax advantages (i.e. no or very low taxation) are not granted to entities without any real economic activity and substantial economic presence in the jurisdiction.

3) Taking into account the features of each specific industry or sector, the jurisdiction should be asked to introduce requirements concerning an adequate level of (qualified) employees, adequate level of annual expenditure to be incurred, physical offices and premises, investments or relevant types of activities to be undertaken.

4) The jurisdiction shall also ensure that the activities are actually directed and managed in the jurisdiction and that core income-generating activities are performed in the jurisdiction. The jurisdiction shall in addition provide a guarantee that appropriate resources are deployed by governmental authorities, including tax authorities, to check the application of these requirements and that sanctions are envisaged in case of non-compliance.

5) The jurisdiction shall introduce appropriate notification regimes whereby all information needed to assess the actual amount of profits booked in the jurisdictions could be made available to the relevant jurisdictions having in place CIT system for the purpose of calculating the tax liability of their taxpayers. The jurisdiction has to ensure that information are collected, accessed and automatically exchanged with relevant EU Member States.

II/ The core income generating activities in 2.2 jurisdictions

According to Criterion 2.2: "*The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction*". The jurisdictions which raised concerns were asked to address these through the imposition of substance requirements, where appropriate. It is considered that those substance requirements should mirror those used in the FHTP in the context of specified preferential regimes.

A taxpayer should not be able to avoid the substantial activity requirements and still benefit from a low or no tax rate simply by moving to a 2.2 jurisdiction which at present is not subject to the substance requirements; rather, the same test for carrying out the core income generating activities in a jurisdiction should apply equally whether these are carried out in a preferential regime or in a 2.2 jurisdiction In fact, the need for this approach has been underlined by some members of the Inclusive Framework which are now adding substantial activity requirements to their preferential regimes, and have expressed concern that they may be at a competitive disadvantage if taxpayers relocate to a zero tax jurisdiction rather than comply with the new requirements. Thus, there is a strong level playing field argument that points in this direction.

In the context of FHTP assessments, the substantial activities criterion requires that jurisdictions ensure that core activities relevant to the regime type are undertaken by the taxpayer wishing to benefit from the regime (or are undertaken in the jurisdiction). The FHTP guidance on substantial activities further notes that core income generating activities presuppose having an adequate number of full-time employees with necessary qualifications and incurring an adequate amount of operating expenditures to undertake such activities. Finally, it requires the jurisdiction to have a transparent mechanism to ensure taxpayer compliance and to deny benefits if these core income generating activities are not undertaken by the taxpayer or do not occur within the jurisdiction. For IP regimes, specific substance requirements apply, namely the nexus approach.

a. Non-IP Substantial Activities Test

For companies dealing with assets other than IP, the substance requirements would apply to the same types of geographically mobile activities which have typically been the focus of the preferential regimes. 2.2 Jurisdictions would be required to meet the same substantial activities test for each sector, demonstrating that the core income generating activities are undertaken by the entity (or in the jurisdiction), involving an adequate number of employees and expenditure, supported by effective enforcement mechanisms. Annex 2 of this paper contains the 2017 FHTP Guidance on non-IP regimes which will have to be considered as the guidance for this exercise to be applied by analogy.

This would include fund managers as this is a mobile activity within the scope. However, collective investment funds (CIVs) are of a different nature, except in rare circumstances where the manager and the CIV form one legal entity. Therefore, the usual substance requirements cannot automatically be applied to CIVs. Thus, and in part similar to pure equity holding companies, reduced substantial activities requirements adapted to CIVs should apply Requirements in this regard can be paralleled with EU legislation on investment funds, in particular Directive 2011/61/EU on Alternative Investment Fund Managers.

b. Substance requirements for IP income

Income derived from IP assets can pose a higher risk of artificial profit shifting than non-IP assets. This is reflected in international standards in the field of taxation, which require that income deriving from IP assets must be subject to specific substantial activity requirements.

For example, the FHTP's approach to income deriving from IP assets in the context of preferential regimes requires that the tax benefits a company can derive are conditional on the extent of substantial R&D activities of taxpayers receiving benefits income deriving from IP assets. This approach uses expenditures as a proxy for substantial activities to calculate the proportion of income that may enjoy the tax benefit ('The Nexus approach').

In the context of 2.2 jurisdictions, the absence of a preferential regime poses significant challenges to applying the Nexus approach. The overall aim in this context is not to calculate the portion of a company's intangible asset income that can take advantage of a preferential tax rate, but rather to determine whether a company generating income from intangible assets can incorporate or operate within a 2.2 jurisdiction. Therefore, while the focus of the Nexus approach on intellectual property derived from local R&D activities is acceptable as a standard for preferential IP regimes, it could in this context prohibit genuine commercial activities by failing to recognise other intangible assets and different ways in which those assets can be created or otherwise exploited through core income generating activities.

Any approach to substance requirements for IP income must therefore be effective, proportionate and both: (i) adequately address the higher risk of artificial profit shifting posed by income derived from IP assets in certain scenarios; and (ii) not inadvertently prohibit activities that constitute real economic activity

Strengthened general substantial activities approach

The approach that meets these requirements:
1) applies a targeted version of the general substantial activities approach to income derived from intangible assets in low risk scenarios;

2) includes a rebuttable presumption that the test is failed in these situations absent local R&D activities (for IP assets) or local marketing and branding activities (for non-IP intangible assets);

3) Makes the rebuttal of that presumption contingent on a taxpayer being able to evidence that it undertakes the substantive activities supporting intangible asset income, and makes it subject to enhanced reporting and monitoring requirements regardless of the decision taken by the 2.2 jurisdiction on the appropriateness of this substance;

4) presumes the non-compliance of companies that merely passively holds and generates income from intangible assets within higher risk scenarios.

b.1. Core Income generating activities for income deriving from IP assets

For intellectual property assets such as patents it is expected that core income generating activities include R&D activities.

For non-trade intangible assets such as brand, trademark and customer data it is expected that the core income generating activities include marketing, branding and distribution activities.
However the core income generating activities associated with an intangible asset will ultimately depend on the nature of the asset e.g. whether it's a patent, technical know-how, a trademark, customer lists or brand/goodwill.

They will also depend on how that asset is being used to generate income for the company e.g. whether it is being licenced or used to generate income from trading activities, such as the provision of services to third-party customers.

In certain situations therefore, a company might be given the possibility to prove that it is undertaking other core income generating activities associated with intangible asset income without specifically undertaking R&D, marketing and branding. Those activities might include:

- Taking the strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intangible asset; or

- Taking the strategic decisions and managing (as well as bearing) the principal risks relating to the third-party acquisition and subsequent exploitation of the intangible asset; or

- Carrying on the underlying trading activities through which the intangible assets are exploited and which lead to the generation of revenue from third-parties.

These activities, as well as R&D, branding and distribution activities which remain the main core activities to be looked at, would require the necessary staff, premises and equipment. Therefore, it would require more than local staff passively holding intangible assets whose creation and exploitation is a function of decisions made and activities performed outside of the jurisdiction.

They equally wouldn't be satisfied by the periodic decisions of non-resident board members, with the need instead for local, permanent and qualified staff making active and ongoing decisions in relation to the generation of income in the 2.2 jurisdiction.

b.2. Higher-risk scenarios – involvement of foreign related parties

The risks of artificial profit shifting are likely to be greater where a company

(a) owns an intangible asset that has been acquired from related parties or obtained through the funding of overseas R&D activities e.g. under a cost-sharing agreement; and

(b) is licenced to foreign related parties or monetised through activities performed by foreign related parties (e.g. foreign-related parties are paid to develop and sell a product in which the intangible asset is embedded).

To mitigate this greater risk, there should be a rebuttable presumption that the core income generating activities test is not satisfied in these scenarios, even if there are local activities that would, under a transfer pricing analysis, entitle the company to some allocation of taxable profits.

Companies could be given the ability to challenge this default presumption, and evidence how the income being generated in these higher risk situations is directly linked and justified by activities undertaken in the local jurisdiction rather than overseas.

This would need to be a high evidential threshold. Companies would, for example, need to evidence that, in addition or alternatively to R&D, branding and distribution activities, a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intangible asset is, and historically has been, exercised by full time highly skilled employees that permanently reside and perform their core activities within the 2.2. jurisdiction. They must be able to support these evidences through the provision of additional information including:

- Detailed business plans which allow to clearly ascertain the commercial rationale of holding IP assets in the jurisdiction,

- employee information including level of experience, type of contracts, qualifications, duration of employment,

- concrete evidence that decision making is taking place within the jurisdiction.

This information would have to prove that in the jurisdiction there is more than local staff passively holding intangible assets whose creation and exploitation is a function of decisions made and activities performed outside of the jurisdiction.

This test will not be satisfied by mere periodic decisions of non-resident board members, with the need instead for local, permanent and qualified staff making active and regular decisions in relation to all the activities linked to the generation of IP income.

In order to further mitigate the higher level of risk that these scenarios pose, even where a taxpayer is able to rebut the presumption (i.e. it can demonstrate that it undertakes the substantive activities supporting intangible asset income) the 2.2 jurisdiction would be required to disclose the full evidence to the competent authority in the country of residence/relevant jurisdiction. (This may require that legislation be put in place that requires enhanced reporting from companies that fall into this category). This would allow Member States to review whether the testing being implemented by 2.2 jurisdictions' competent authorities in higher risk scenarios adequately mitigated tax risks.

The effectiveness and proportionality of the new legislation reflecting this approach will be subject to review after 1 year of application by the relevant jurisdictions. Since the new legislation is requested to be in place as of 1 January 2019 and will be immediately applicable to new companies (as well as to new activities and new IP assets), while existing companies (or existing activities and existing IP assets) will be given 6 months to adapt (i.e. by 1 July 2019 at the latest), the COCG will review this approach in July 2020 (1 year after the new legislation has been applicable to all companies) with a view to considering possible amendments.

III/ Implementation by 2.2 jurisdictions and consequences for non-compliance
A 2.2 jurisdiction would implement the substantial activities requirement in three key steps:

(1) identify the relevant activities in their jurisdiction;

(2) impose substance requirements;

(3) ensure there are enforcement provisions in place.

The first obligation for the 2.2 jurisdictions is to identify the relevant categories of activities in the jurisdiction in respect of which substance requirements would apply, including at least banking, insurance, fund management, financing, leasing, headquarters, and shipping. The 2.2 jurisdictions may be able to identify these categories of activity through existing or newly introduced regulatory requirements or by obtaining other information from reporting requirements or service providers. Alternatively, if it is administratively easier, a jurisdiction could apply the substance requirements to all businesses but then reduce requirements / carve out those entities that are not in scope. A jurisdiction may also decide to exempt local businesses that are not in scope of the work on harmful tax practices, such as hotels and retail, or alternatively have them covered as presumably such entities would have no difficulty in meeting the requirements.

Second, for each set of activities, the 2.2 jurisdiction would need to impose substance requirements to ensure consistency with the COCG and FHTP guidance. This may require

legislative changes, as is the case for many of the other Inclusive Framework members, and which many of the 2.2 jurisdictions have already indicated their willingness to do.

Third, the 2.2 jurisdiction would need to implement adequate enforcement and sanction mechanisms to ensure compliance by the relevant individual entities with substance requirements. This would need to include mechanisms to identify which entities are conducting the relevant categories of activities, and to detect and enforce the substantial activities requirements for entities which purport to have substantial activities but in fact do not meet the requirements. To be able to do so, a 2.2 jurisdiction would need to require each entity in scope to prepare and file information on at least business type (to identify the type of mobile activity); amount and type (e.g. rents, royalties, dividends, sales, services) of gross income; amount and type of expenses and assets; premises, and number of employees, specifying the number of full time employees. In addition, each entity must be required to prepare and file information showing that it has conducted relevant core income generating activities such as R&D, marketing, branding and exploitation within the 2.2 jurisdiction.

Ordinarily in the context of a preferential regime, where a taxpayer has failed to meet the substantial activity requirements the result should be that the tax benefits of the regime are denied. This would not apply in the 2.2 context, but there would need to be an equivalent level of enforcement. The consequences where an entity fails the substance requirements should include rigorous, effective and dissuasive regulatory penalties and enhanced spontaneous exchange with jurisdictions of residence (e.g. of a party making a deductible payment to such a company) and ultimately, where other sanctions produce no results, this should lead to the striking off the register of such an entity. This should be complemented by a commitment by the 2.2 jurisdiction to continue enforcement efforts and remedy any shortcomings in the enforcement process.

IV/ Review and monitoring of the 2.2 jurisdictions' implementation of the substance requirements

Drawing on the process and practice of the Code of Conduct Group and FHTP, there are two parts to the review to ensure a 2.2 jurisdiction had implemented the substance requirements: a review of the legal and administrative framework and monitoring of effectiveness in practice.

The first part in the assessment of the 2.2 jurisdiction would involve a review of the legal and administrative framework (whether regulatory, commercial tax, or other legislation) and other information provided by the jurisdiction to determine whether the substance requirements are met. This includes whether the legislation requires substance, and whether there are adequate enforcement and sanction provisions, as well as information on the mechanism for overseeing these provisions (such as which agency will enforce the requirements, how this will be done and with which resources).

The second part is an ongoing annual monitoring process to ensure that the legislative and enforcement provisions were being adequately administered by the 2.2 jurisdiction at a systemic level. This includes collecting information on the core income generating activities for the activity, requirements for an adequate number of full-time employees with necessary qualifications and for an adequate amount of operating expenditures to undertake core income generating activities, enforcement mechanisms and statistics such as the aggregate numbers of entities, aggregate amount of income, employees and expenditure in that type of activity, and information on the number of entities which have been found to not meet the requirements.

This information is used as a high level indicator as to whether the law or enforcement mechanisms are deficient and need to be remedied by the jurisdiction. Moreover, given the

fact that the Global Forum initiated a close cooperation on the 2.2. issue, on site assessments on the adherence of the above standards by this forum could be an option.

The existing review documents (i.e. the self-review template and monitoring questionnaire) could be used, with slight adjustments to accommodate the analytical approach.

V/ Further transparency requirements

Three requirements are set out below to enhance transparency. These draw on existing transparency initiatives related to both the EU and the OECD. Those requirements are not mutually exclusive and could be applied simultaneously by the 2.2 jurisdictions.

1 – Spontaneous exchange on specific risk issues

Spontaneous exchange of information has long been a part of the EU work and the FHTP framework for addressing harmful tax practices to better equip other countries to enforce their own tax laws and identify BEPS concerns. For example, in the FHTP context, specific requirements have been agreed for spontaneous exchange of information on tax rulings (including rulings related to preferential regimes), on certain features of IP regimes, and on downward adjustments.

In this vein, specific transparency requirements must be devised as a backstop to the substance requirements for 2.2 jurisdictions. The information filed by entities that are in scope (see Section "*Implementation by 2.2 jurisdictions and consequences for non-compliance*", fourth paragraph) must be spontaneously exchanged with EU members where either the legal or beneficial owner is tax resident, which then links also to the availability of legal and beneficial ownership information discussed below. The burden of proof whether substance criteria are met is on the taxpayer.

In these cases, it could be possible to use the FHTP transparency framework for spontaneous exchange of information on tax rulings. For example, the transparency framework sets out with which jurisdictions information must be exchanged, such as country of residence of related party which is on the other side of a relevant transaction, and the immediate parent and ultimate parent company. It would also be possible to design a standardised format for such exchanges, using a similar template and XML Schema as is used for the exchange on rulings and which was developed in cooperation with the EU).

2 – Beneficial ownership

The need for accurate and accessible beneficial ownership information is part of the international tax and anti-money laundering standards. EU Member States have been ambitious on this agenda, most recently in December 2017 by reaching political agreement on the Fifth Anti-Money Laundering Directive, which will ensure the creation of beneficial ownership registers in all EU Member States, as well as their interconnectivity and their access to the public under certain circumstances. This is the latest step in the wider strategy to achieve greater efficiency in access to ownership information, including through the Fourth Anti-Money Laundering Directive, the DAC 5, the regulation on the interconnection of corporate registers and initial scoping efforts at OECD's Working Party 10 with respect to the standardisation of the structuring of ownership information held in central repositories in electronically searchable form.

To further drive forward this agenda, a 2.2 jurisdiction could be required to ensure that every company or other body corporate created under its laws would be subject to enhanced transparency requirements that ensure that ownership information is available and accessible in a timely, accurate and electronically searchable manner. This could be done,

for instance, by creating more efficient exchange of information on beneficial ownership through efficient access to registries being made accessible to designated authorities from participating jurisdictions.

As such, 2.2 jurisdictions would need to ensure that legal and beneficial ownership information in relation to bodies corporate is kept up to date and can be readily queried in an electronic manner, therewith allowing relevant international authorities to ascertain the ownership of an entity in a real-time or close to real time manner.

This would allow each 2.2 jurisdiction to keep its own, domestic repositories in place, while enabling the instantaneous query of ownership information across jurisdictions through, for instance, a single interconnected query platform.

In this context, 2.2 jurisdictions would be expected to have fully accurate legal ownership information in relation to their bodies corporate available in all instances, as well as to require that up-to-date beneficial ownership information be made available and kept up to date by bodies corporate, to the extent obtainable under domestic law and taking into account the circumstances of publically traded entities. In light of the experience in the EU of implementing enhanced access to beneficial ownership information, the implementation of the enhanced transparency requirements in 2.2 jurisdictions could be introduced in a staged manner to ensure the greatest quality and usability of the data, effectiveness of access agreements and so on.

More broadly, the efforts made at the EU level and with the 2.2 jurisdictions could be supported and expanded internationally including through ongoing work within through the OECD's WP10.

3 – Mandatory disclosure rules

The relevance of mandatory disclosure rules in the offshore tax avoidance and evasion field is now heightened, with the EU directive ("DAC6") and the approval of rules by Working Party 10 and Working Party 11 on mandatory disclosure rules for CRS Avoidance Arrangement and Opaque Offshore Structures. Building on this work, a third option for enhanced transparency would be to require 2.2 jurisdictions to introduce mandatory disclosure rules consistent with DAC6 and the OECD work. Given that many of the 2.2 jurisdictions were actively involved in the discussions in WP10 and WP11, they are already very familiar with these rules (and thus the equivalent hallmark D in DAC6).

These rules would require such promoters and service providers to disclose information on the arrangement or structure to the competent authority (which is identified in accordance with a test set out in domestic law on the basis of the one set out in DAC6).

Information on those schemes (including the identity of any user or beneficial owner) would then be exchanged with the tax authorities of jurisdiction in which the users and/or beneficial owners are resident in accordance with the requirements of the applicable information exchange agreement.