

Code of Conduct Group Update

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. In 1998 the Code of Conduct Group (Business Taxation) (the “Code Group”) was set up to assess tax measures and regimes that may fall within the scope of the Code of Conduct.

In 2017 the Code Group investigated the tax policies of third countries to the European Union (“EU”) in order to develop an EU standard of good tax governance and standardise the approach taken by EU member states. As part of the screening process jurisdictions were assessed against the following good governance criteria:

- i) tax transparency,
- ii) fair taxation, and
- iii) compliance with the implementation of anti-BEPS measures.

No concerns were raised against the Isle of Man’s standards of tax transparency and anti-BEPS compliance.

The Isle of Man was compliant with the general principles of “fair taxation” as it had been assessed against the Code of Conduct criteria and deemed non-harmful following its commitment in 2002 to comply with the code of conduct for business taxation adopted in 1997.

However, in 2017, jurisdictions with low or zero rates of corporation tax were also assessed against a second criterion (referred to as 2.2 by the Code Group). 2.2 states that the “*jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction*”. Following this screening process, the Code Group expressed concern that the Isle of Man did not have a “legal substance requirement for entities doing business in or through the jurisdiction”. The Code Group was concerned that this “*increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial economic presence*”.

These concerns were articulated in a letter to the Island in November 2017. In response, the Isle of Man Government made a commitment to address these concerns by the end of December 2018.

Actions

In order to meet its commitment to address and resolve the identified concerns, the Isle of Man has been exploring the potential impact of imposing legal substance requirements in the Island for some companies.

On 22 June 2018 the Code Group published a Scoping Paper endorsed by ECOFIN as to the specific measures and conceptual definitions they are expecting jurisdictions assessed against criterion 2.2 to meet. This can be found here:

http://www.consilium.europa.eu/register/en/content/out?DOC_TITLE=code+of+conduct+guidance

[&DOC_SUBJECT=FISC&i=COCGGD&ROWSPP=25&DOC_LANCD=EN&ORDERBY=DOC_DATE+DESC&typ=SET&NRROWS=500&RESULTSET=1&TARGET_YEAR=2018.](#)

The Isle of Man has also engaged closely with the OECD through the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Base Erosion and Profit Shifting Inclusive Framework and a specific voluntary group established to progress discussions 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) Forum on Harmful Tax Practices (FHTP) in the context of preferential regimes”. The Code Group Scoping Paper largely asserts that expected substance requirements should mirror those used in the OECD Forum on Harmful Tax Practices, guidance on which can be found here:

<http://www.oecd.org/tax/beps/harmful-tax-practices-2017-progress-report-on-preferential-regimes-9789264283954-en.htm>.

The Isle of Man has been working closely with the governments of Guernsey and Jersey to collectively develop proposals to address the concerns raised by the Code Group. This work has included dialogue with the European Commission (Taxation and Customs Union - TAX UD) and the Code Group, both in plenary sessions (with other jurisdictions) and bilateral meetings. This engagement is ongoing. Discussions have also taken place with the OECD Global Forum and the FHTP.