

# Scope of new OECD rules on abuse of Malta residence & citizenship programmes circumventing CRS

- > OECD preventing abuse of residence & citizenship by investment scheme
- > Why has OECD specifically targeted Malta more than any other Jurisdiction?
- > Impact on actual and future residents in Malta
- > Consequences for promoters and service providers of residence schemes?

## Mark Morris,

CRS specialist interacting with OECD on Rbl,

Mark Morris Consulting, Zurich

The OECD is focusing on Malta's abuse of residence-by-investment (Rbl) and citizenship-by-investment (Cbl) schemes used to circumvent the CRS. Noticeably, the OECD explicitly expresses its concern of a jurisdiction avoiding the CRS by mentioning the «Daphne Project», as underlying the importance of maintaining the integrity of the CRS. This risk is specifically addressed in the «Mandatory Disclosure Rules addressing CRS Avoidance Arrangements». However, the OECD regards the abuse of these programmes, as warranting a separate initiative. High-risk Rbl /CBI schemes do not have a minimum stay or accept «not being elsewhere for 183 days» combined with no tax on unremitted income. Uniquely, the OECD has published its warning to the Finance Minister that Malta is anticipated be placed on the list of abusive schemes. A flaw in CRS considering tax-residence as the physical residence. Anecdotal evidence indicates that these schemes are often used as the residence for CRS self-certification, whilst the account holder remains tax-resident elsewhere. The OECD is (i) assessing how these schemes can be exploited to circumvent the CRS; (ii) identifying high-risk of abuse schemes; (iii) reminding stakeholders of the importance of correctly applying relevant CRS due diligence procedures to prevent abuse.

Lists: 1: UAE, Cyprus, Malta, St. Kitts, St. Lucia, Dominica, Antigua, Grenada; 2: Portugal, Greece...; 3: Thailand, Andorra, Gibraltar, Channel Islands, Monaco, Cayman, Bahamas, Turks & Caicos, Montserrat...; 4: Singapore, Costa Rica, Ecuador, Guatemala, Nicaragua, Brazil, St. Maarten, Barbados, Panama, Hong Kong, Philippines, Malaysia, Seychelles, Mauritius, Vanuatu...; 5: Switzerland, Austria, Australia, New Zealand, Estonia, Latvia, Lithuania, Spain, Czech, Belgium, Isle of Man, Brazil, UK...

### Schedule

13.30-14.00 Registration  
14.00 Beginning of seminar  
15.30 Coffee break  
17.30 End of seminar

### The OECD initiative in context

- Why OECD addressing loopholes before full implementation of CRS?
- Why OECD considers Rbl & Cbl has inordinate risk of abuse for circumventing CRS?
- Can jurisdictions decide to not implement these additional anti CRS avoidance measures?
- OECD high-risk hallmarks of Rbl & Cbl abuse
- Why is there a separate initiative to address Rbl / Cbl if already covered by the MDR?
- Is Malta the primary target for the OECD?

### How OECD addresses Cbl / Rbl schemes

- What are the hallmarks of avoidance arrangements for Rbl / Cbl?
- Who are reporting intermediaries?
- When must lawyers with confidential privilege report?
- What are the triggers for reporting?
- What information is reported?
- When to report on actual taxpayers?
- When to report on potential clients before obtaining Rbl / Cbl?
- What are the proposed penalties for non-compliance on intermediaries? On clients?
- Who reports retroactively on clients since 29 October 2014?

### How stakeholders other than FIs and intermediaries will to be obliged address the risks:

- Jurisdiction tax authority interaction with previous tax residence
- How does the Convention Mutual Assistance in tax matters apply here?
- What if Rbl jurisdiction has not signed the Convention?

### How must FIs enhance due diligence

- When to determine other tax residences if since October 2014 customer presents Cbl / Rbl identity plus utility bill plus tax or / and residence certificate?
- Discovering indicia of multiple residences using the OECD Model Tax Convention, namely (i) Permanent home, (ii) Centre of Vital Interest

(iii) Habitual Abode (iv) Other indicia

- When is a house / apartment / hotel room a Permanent Home
- Vital Centre of Interest: What are social relations vs. economic relations? Which take priority?
- Is twice yearly visit or declaring «not being elsewhere for more than 183 days» regarded as tax-residence?
- Must FI utilise Double Taxation Agreement tie breakers to determine tax residencies?
- What are the ways clients can prove they are not resident elsewhere?
- What if client cannot prove he is not tax resident elsewhere?

### Hurdles to implementing

- Ambiguous bright-line rules
- Invoking legal privileged confidentiality and individual protection from self-incrimination
- Unlikely extraterritorial projection
- Can penalties be applied for non-compliance if jurisdiction prohibit retroactive legislation? Can courts hear on the case if no prescriptive and adjudicative laws?
- Impact of residency on forced heirship rules

### Which avoidance is strongly or weakly covered?

- Under what conditions will Rbl / Cbl not be addressed?

### Practical application

### Which jurisdictions are impacted?

- Criteria assessment of the 72 jurisdictions offering schemes
- Ranking of Rbl / Cbl for risk of abuse: Highest priority targets<sup>1</sup>, very High Risk<sup>2</sup>, High risk<sup>3</sup>, Watch list<sup>4</sup>, Whitelist<sup>5</sup>

### Impact of initiative on jurisdictions

- How are the Rbl / Cbl jurisdictions likely to react to the OECD initiative: which jurisdictions are closest to changes of rules to their CBI/RBI regime?

### Impact of initiative on promoters/service providers

- Which professionals are concerned: tax consultants, lawyers, accountants, corporate service providers and trust companies, corporate directors, banks, life insurance companies, compliance, fund administrators?
- What is their risk exposure for having sold the RBI/CBI schemes before 2014 vs. since 2014?
- What do the promoters/ service providers have to do: informing their clients, reporting to tax authorities, informing upstream and downstream intermediaries, inform the financial institutions (bank...)?
- Legal and practical issues for promoters/service providers schemes for:
- Highest priority targets like UAE, Malta, Cyprus, Greece, Portugal
- High risk jurisdictions like Monaco

- Watch list jurisdictions like Hong Kong, Singapore
- White list jurisdictions like Switzerland, UK, Belgium

### Impact of initiative on clients

- What can the clients do legally to avoid disclosure? Move to low-risk Rbl?
- How clients likely to react to OECD initiative: will staying 183 days from time rules are effective be solution?
- If obtaining tax clearance certificates from previous residences, how far back?
- What if they renounce their CBI/RBI status before rules effective: are they going to be disclosed? Do they have to report/ prove that they have given up their CBI/RBI status?

### Rbl/Cbl vs. BEPS MDR v.s EU MDR vs UK POTAS

- Is Rbl / Cbl also under the scope of these?

## PRACTICAL INFORMATION

### Venue

Grand Hotel Excelsior  
Great Siege Road, Valletta

### How to register

by phone: +41 (0) 22 849 01 11  
by fax: +41 (0) 22 849 01 10  
by e-mail: info@academyfinance.ch  
by post: Academy & Finance SA  
PO Box 6069, CH-1211 Geneva 6  
www.academyfinance.ch

### Fees

450 euros  
Additional registrations from the same company: - 50%

### Payment

Payment is made bank transfer or by credit card. For payment by bank transfer, we will send you an invoice by email. For payments by credit card we will be debit the amount and send you an invoice / credit card receipt by email.

### Substitution & cancellation policy

Substitutions from the same company are accepted at any time. Cancellation requests must be received in writing, by fax or by post up to the following dates end of business :

- 20 May refund of 80%
- 5 June refund of 30%
- after 5 June no refund will be made for cancellation.

## REGISTRATION FORM

I register for the seminar «Scope of new OECD rules on abuse of Malta residence & citizenship programmes circumventing CRS» in Valletta on wednesday 20 June 2018.

### FIRST PARTICIPANT

Full name.....  
Position.....  
E-mail.....

### SECOND PARTICIPANT (-50%)

Full name.....  
Position.....  
E-mail.....  
Company.....  
Address.....  
Postcode..... City.....  
Tel ..... Fax.....

Bank transfer  Mastercard  VISA  AMEX

Credit card No : \_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_ Expiry date : \_\_\_\_/\_\_\_\_

Cardholder.....

Address of AMEX cardholder .....

Date ..... Signature.....