

OECD preventing abuse of residence & citizenship by investment schemes to circumvent CRS

What impact on jurisdictions, clients, promoters and service providers?
How must Financial Institutions enhance due diligence?

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The OECD is focusing on CRS loopholes. The «Mandatory Disclosure Rules addressing CRS Avoidance Arrangements» includes residence-by-investment (Rbi) and citizenship-by-investment (Cbi) schemes. The OECD regards the abuse of these programmes to circumvent the CRS, as warrants a separate initiative. High-risk Rbi / Cbi schemes do not have a minimum stay or accept «not being elsewhere for 183 days» combined with no tax on unremitted income. 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...

The OECD initiative in context

- Why OECD addressing CRS loopholes before full implementation?
- What does the OECD consider as a Rbi vs. Cbi?
- Why OECD considers Rbi & Cbi 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 Rbi & Cbi abuse
- Why is there a separate initiative to address Rbi / Cbi if already covered by the MDR?

How OECD addresses Cbi / Rbi schemes

- What are the hallmarks of avoidance arrangements for Rbi / Cbi?
- 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 Rbi / Cbi?
- 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 address the risks:

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

How must FIs enhance due diligence

- When to determine other tax residences if since October 2014 customer presents Cbi / Rbi identity plus utility bill plus tax or / and residence certificate?
- Is 2 x year visit or declaring «not being elsewhere for more than 183 days» regarded as tax-residence?
- Centre of vital interest or other places of abode?
- What are the ways clients can prove they are not resident elsewhere?
- Can client move from one Rbi scheme to another to avoid reporting?
- What if client cannot prove he is not tax resident elsewhere? Assume previous tax-residence still valid unless tax clearance certificate?
- Revert to residency passport if undocumented?

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 ex post facto 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 Rbi / Cbi not be addressed?

Practical application

Which jurisdictions are impacted?

- Criteria assessment of the 72 jurisdictions offering schemes
- Ranking of Rbi / Cbi for risk of abuse: Highest priority targets¹, very High Risk², High risk³, Watch list⁴, Whitelist⁵

Impact of initiative on jurisdictions

How are the Rbi / Cbi 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, banks, life insurance companies...?
- What are their risk exposure for having sold the Rbi/Cbi schemes before 2014 or since 2014?
- What do the promoters/ service providers have to do: informing their clients, reporting to tax authorities, informing the financial institutions (bank...)?
- Legal and practical issues for promoters/service providers schemes for:
 - Highest priority targets like UAE, Malta, 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?

- 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?

Rbi/Cbi vs. BEPS MDR v.s EU MDR vs UK POTAS

Is Rbi / Cbi also under the scope of these?

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PRACTICAL INFORMATION

Venue

Widder Hotel
Rennweg 7, Zurich

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
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- 18 April 2018 refund of 80%
- 4 May refund of 30%
- after 4 May no refund will be made for cancellation.

REGISTRATION FORM

I register for the seminar «OECD preventing abuse of residence & citizenship by investment schemes to circumvent CRS» in Zurich on friday 18 May 2018.

FIRST PARTICIPANT

Full name.....

Position.....

E-mail.....

SECOND PARTICIPANT (-50%)

Full name.....

Position.....

E-mail.....

Company.....

Address.....

Postcode..... City.....

Tel Fax.....

Mastercard VISA AMEX

Credit card No : _____/_____/_____/_____ Expiry date : ____/____

Cardholder.....

Address of AMEX cardholder

Date Signature.....

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