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?

Mark Morris,
CRS specialist interacting with OECD,
Mark Morris Consulting,
Zurich

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 Rico, 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 targets[1], very High Risk[2], High risk[3], Watch list[4], Whitelist[5]

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?

GENEVA, WEDNESDAY 23 MAY 2018, HOTEL MANDARIN ORIENTAL, 9.00-12.30

ACADEMY & FINANCE

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

PRACTICAL INFORMATION

Venue
Hotel Mandarin Oriental
Quai Turrettini 1, Geneva

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
590 CHF + VAT (7.7%)
Additional registrations from the same company: - 50%

Registration and payment
Payment is made by credit card. Credit card payments will be debited immediately upon receipt of card details. If it is impossible or impractical for you to pay by credit card we will accept a payment by wire transfer. In this case please mention it on the registration form or send an email to info@academy-finance.ch. In any case, we will send you an invoice 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 :

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

AF 892

REGISTRATION FORM

I register for the seminar «OECD preventing abuse of residence & citizenship by investment schemes to circumvent CRS» in Geneva on wednesday 23 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...

The organisers reserve the right to amend the programme if, despite their best efforts, circumstances oblige them to do so.