

«UAE Investor Visas plus utility bills are not acceptable as sole tax-residency for self-certification unless it is center of vital interest or clients prove they are no longer tax-resident in previous jurisdiction»

Bespoke intro for each country we hold seminar

OECD initiative: 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.

Seminar objective: Absence of evidence will no longer be regarded as evidence of absence. Describe the criteria to assess the 72 jurisdictions offering Cbi & Rbi schemes for-risk of abuse to circumvent CRS. The OECD will confront this with tax compliance and policy related measures. Financial Institutions will have to enhance due diligence of tax-residencies of account holders showing certain residencies. Additional exposure is promulgated in the Mandatory Disclosure Rules covering intermediaries promoting and servicing these schemes. Furthermore, jurisdictions, tax administrators, and other stakeholders offering these schemes will be called to invokes spontaneous exchange of information according to the Convention of Mutual Assistance in tax matters. A review of legal and practical limits which may hobble the effectiveness of these measures.

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 misuse 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

- How Mandatory Disclosure Rules cover these 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

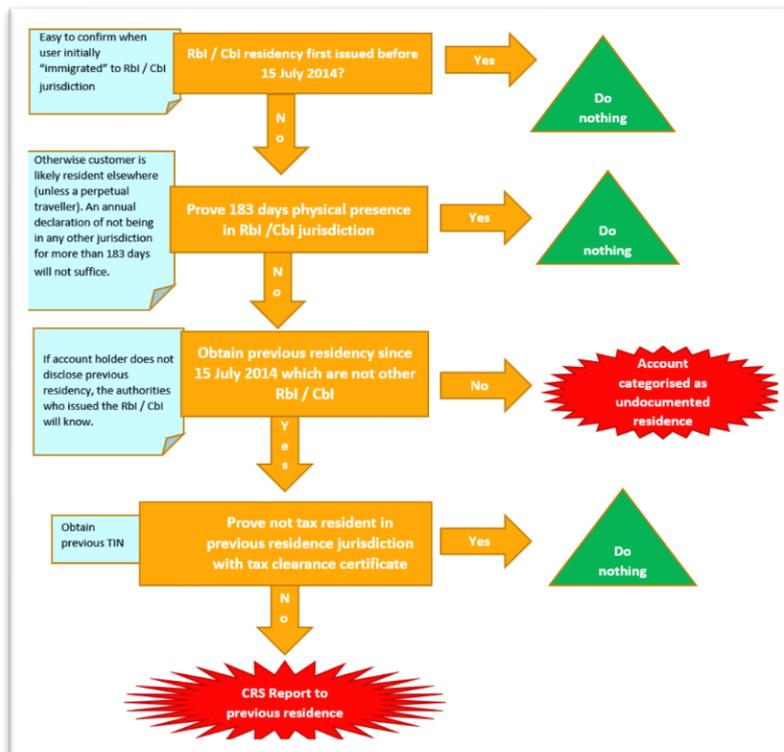
obtaining Rbi / Cbi?

- 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 infrequent 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?
- 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?

· **Hurdles to implementing**

· **Practical application:**



· **Criteria assessment of the 72 jurisdictions offering schemes**

- Widely used to avoid CRS, low cost, tax certificate issued, a TIN just for local income, no minimum stay, no tracking of stay, no tax, low tax, exempt foreign income, exempt non-remitted income, non-domicile recognition, no or low tax on

individuals using scheme remitting income, no indication on certificate it was paid for,, no spontaneous exchange with previous residence, dual nationality allowed, no CRS info received, no CRS info given, automatic convert Rbi to CBI.

· Ranking of Rbl / Cbl for risk of misuse

- **Highest priority targets:** UAE, Cyprus, Malta, St. Kitts, St. Lucia, Dominica, Antigua, Grenada...
- **Very High Risk:** Portugal, Greece...
- **High risk:** Thailand, Andorra, Gibraltar, Channel Islands, Monaco, Cayman, Bahamas, Turks & Caicos, Montserrat...
- **Watch list:** Singapore, Costa Rica, Ecuador, Guatemala, Nicaragua, Brazil, St. Maarten, Barbados, Panama, Hong Kong, Philippines, Malaysia, Seychelles, Mauritius, Vanuatu...
- **Whitelist:** Switzerland, Austria, Australia, New Zealand, Estonia, Latvia, Lithuania, Spain, Czech, Belgium, Isle of Man, Brazil, UK...

Impact of initiative on jurisdictions, promoters and clients

· How the Rbl / Cbl jurisdictions likely to react to the OECD initiative

- Which jurisdictions are closest to changes of rules to their CBI/RBI regime?

· Legal and practical issues for promoters/service providers schemes for:

- Highest priority targets like Cyprus, UAE, St. Kitts, Malta, Portugal...
- High risk jurisdictions like Monaco, Greece, Bahamas, Thailand...
- Watch list jurisdictions like Hong Kong, Singapore...
- White list jurisdictions like Switzerland, UK and Belgium...

· How are promoters likely to react to OECD initiative?

· 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?

· OECD RBI/CBI rules and 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...)?

· Rbl/Cbl vs. BEPS MDR vs. EU MDR vs UK POTAS

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