

“Absence of evidence is not evidence of absence”

Addressing misuse of residence by investment: If, since 29 October 2014, a high-risk residence or citizenship by investment jurisdiction is presented as the address for CRS purposes, the reporting Financial Institution must confirm the account holder is resident there for at least 183 days or it is the centre of vital interests. Otherwise, the previous jurisdiction of residence is regarded as tax residence, unless a tax clearance certificate is provided. In effect, for Rbi / Cbi users, the residence certificate and utility bill cannot be used for due diligence for tax residence for Rbi / Cbi users.

Rbi
residence
certificate



Rbi
utility
bill



I. Origin of why paid-for-right-to-reside can avoid CRS

CRS due diligence accepts documentary evidence on residence, not tax residence

The OECD explains the need for automatic exchange of information is due to taxpayers failing to comply with tax obligations in their **home** (centre of vital interest) jurisdiction by holding investments offshore. Yet, in the CRS, Financial Institutions may accept documentary evidence of residency consisting of government issued identification and utility bill. The CRS thus seemingly assumes the account holder is (i) tax resident where he has a place of abode, regardless of how many days physically present, and (ii) is not tax resident elsewhere.

Resident in Cbi / Rbi but simultaneously tax-resident elsewhere

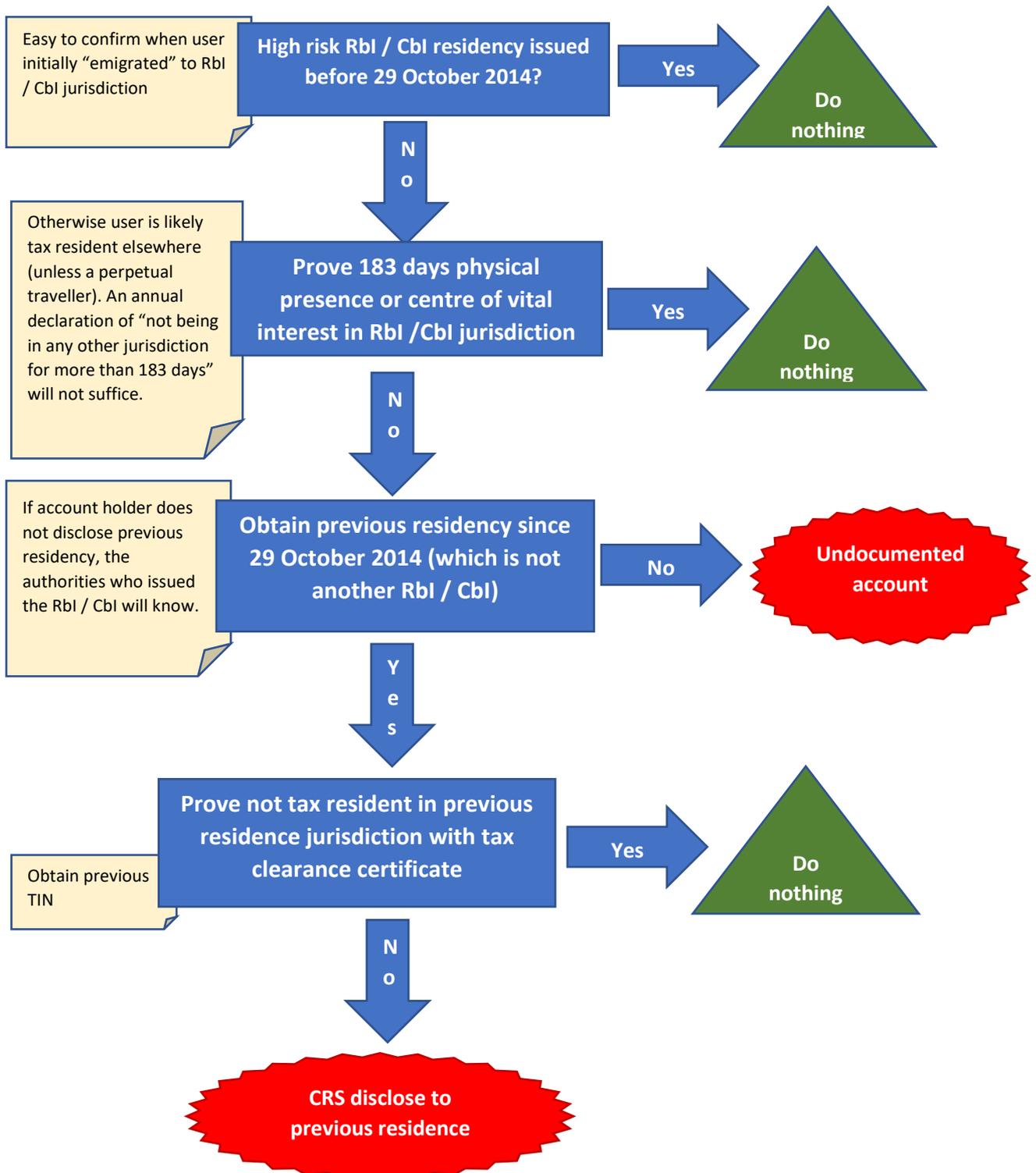
There are over 70 jurisdictions offering Residence-by-Investment (Rbi) and / or Citizenship-by-Investment (Cbi) schemes. Many of these present a risk of being used to circumvent the CRS due to a combination of fiscal advantages and minimum presence required. These lackadaisical residence conditions are intentionally designed to permit investors to remain tax-resident in their **home** jurisdiction whilst benefitting the tax advantages of paid-for-residency.

1. Fiscal advantage: Impose no income tax on residents (e.g. UAE, St. Kitts) or no tax on foreign income for non-residents (e.g. Cyprus, Greece, Spain), or no tax on unremitted or income for users of Rbi / Cbi schemes (e.g. Portugal) or implement a non-domicile tax regime (e.g. Malta)
2. Dual residency: No minimum physical presence requirements or lack of tracking days stayed or accepting a declaration of «*not being elsewhere for 183 days*» or requiring an infrequent or merely demonstrating an *intention or commitment* to long-term domicile by owning / renting a place of abode.

II. Addressing of misuse Cbl and Rbl

The recently announced Mandatory Disclosure Rules is may not be effective in preventing misuse of Rbl / Cbl schemes to avoid the CRS because it does not guide FIs on how to determine if an account holder is tax resident elsewhere. This is likely the jurisdiction the account holder was resident before obtaining Rbl / Cbl residence.

(i) FI confirms validates user of Rbl / Cbl is not current tax resident in previous jurisdiction



Addressing of misuse cont...

- (ii) Remind Financial Institutions maintaining these accounts of Mandatory Disclosure Rules concerning Rbl and Cbl schemes and penalties for non-compliance
- (iii) The authorities that issue Rbl and Cbl must spontaneously notify previous residence.
- (iv) Promoters and service providers of Rbl and Cbl schemes have information i their knowledge, possession and control to disclose information.

III. Assessment of high-risk jurisdictions

Criteria for potential misuse to avoid CRS

Widely used to avoid CRS, low cost, tax certificate issued, no minimum stay, no tracking of stay, no tax, low tax, exempt foreign income, exempt non-remitted income, non-domicile recognition, low tax on individuals using scheme remitting income, no indication on certificate it was paid for, issue a TIN just for local income, no spontaneous exchange with previous residence o scheme, dual nationality allowed, no CRS info received, no CRS info given, convert Rbl to CBl.

Rank	Highest risk priority
1	UAE
2	Cyprus
3	St. Kitts and Nevis
4	Malta
5	Greece
6	Portugal
7	Dominica
8	Monaco
9	Antigua & Barbuda
10	Grenada
11	St. Lucia
12	Barbados

- **Higher Risk:** Thailand, Gibraltar, Andorra, Spain, Paraguay, Channel Islands, Cayman, Bahamas, Turks & Caicos, Monserrat, Singapore, Costa Rica, Ecuador, Guatemala, Nicaragua, Brazil, St. Maarten, Barbados, Panama, Hong Kong, Philippines, Malaysia, Seychelles, Mauritius, Vanuatu, Romania, Moldova, Macedonia, Albania, Korea, Fiji, Columbia, Bosnia, Georgia, Comoros
- **Whitelist:** Switzerland, Austria, Australia, New Zealand, Estonia, Latvia, Lithuania, Spain, Czech, Belgium, Isle of Man, Brazil, Ireland, Argentina, UK

IV. Can Rbl / Cbl jurisdictions implement or delay these prevention rules?

The majority cases of Rbl / Cbl misuse occurs with FIs in the same jurisdiction as the Rbl / Cbl country. These jurisdictions may interpret Rbl / Cbl prevention rules as a threat to the sustainability of these programmes. It is also reasonable to conclude that if a jurisdiction designs its Rbl schemes so that users can be dual tax resident, it may want to continue these programmes to support their finance industry which relies on Rbl schemes. There could be an indefinite delay in the implementation of OECD prevention measures. The OECD FAQ on how quickly MDR will be implemented implies the rules are optional:

- “Many countries are actively considering their introduction” (Rbl jurisdictions unlikely)
- “The EU is in advanced discussions to implement the rules as part of a wider directive that would also implement Action 12 on Mandatory Disclosure more broadly” (Most of the egregious Rbl schemes are not offered the EU)
- “Chapter 9 of the CRS requires jurisdictions to have rules in place to prevent CRS avoidance arrangements and clearly the MDR *can* play an important role here” (‘Can’ strongly indicates the rules are not a minimum standard and may optionally be implemented)

Alternatively, jurisdictions wanting to support their Rbl / Cbl industry may implement the OECD prevention rules, but defang the non-compliance penalties, such as insignificant monetary fines or not impose the threat of intermediaries losing their license for regulated business.

Unless Rbl / Cbl preventative rules and the MDR is a minimum standard, with meaningful penalties for non-compliance, misuse of Rbl / Cbl will automatically shift to jurisdiction that have not yet implemented them.

===== END OF COMMENTS =====