

Consultation document

PREVENTING ABUSE OF RESIDENCE BY INVESTMENT SCHEMES TO CIRCUMVENT THE CRS

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1. More and more jurisdictions are offering “residence by investment” (RBI) or “citizenship by investment” (CBI) schemes. These are schemes that allow foreign individuals to obtain citizenship or temporary or permanent residence rights in exchange for local investments or against a flat fee.
2. Individuals may be interested in these schemes for a number of legitimate reasons, including greater mobility thanks to visa-free travel, better education and job opportunities for children, or the right to live in a country with political stability.
3. At the same time, they can also offer a backdoor to money-launderers and tax-evaders. In this regard, information released in the market place and obtained through the OECD’s CRS public disclosure facility, highlights the abuse of RBI and CBI schemes to circumvent reporting under the Common Reporting Standard (CRS).
4. The OECD is looking into this matter as part of its CRS loophole strategy. This document (1) assesses how these schemes can be exploited in an attempt to circumvent the CRS; (2) identifies the types of schemes that present a high risk of abuse; (3) reminds stakeholders of the importance of correctly applying relevant CRS due diligence procedures in order to help prevent such abuse; and (4) explains next steps the OECD will undertake to further address the issue, assisted by public input.
5. Public input is sought both to obtain further evidence on the misuse of CBI/RBI schemes and on effective ways for preventing such abuse. Such input will be taken into account in determining the next steps that will be taken. Interested parties are invited to send their **comments** on this consultation draft **by 19 March 2018** at the latest by email to CRS.Consultation@oecd.org in Word format (in order to facilitate their distribution to government officials). They should be addressed to the International Co-operation and Tax Administration Division, OECD/CTPA. Comments in excess of ten pages should attach an executive summary limited to two pages

1. How CBI and RBI schemes can be exploited to circumvent the CRS

6. *CBI/RBI schemes do not offer a solution for escaping the legal scope of reporting pursuant to the CRS.* These schemes grant a right of citizenship of a jurisdiction or a right to reside in a jurisdiction. They generally do not provide tax residence (an overview of the tax residency rules for all jurisdictions participating in the CRS can be consulted here). Reporting under the CRS is based on tax residence, not on citizenship or the legal right to reside in a jurisdiction. Even where tax residence can be obtained through some RBI schemes, they do not by themselves affect the tax residence in the original country of residence of the individual. The CRS requires taxpayers to self-certify all their jurisdictions of residence for tax purposes.
7. Nevertheless, *CBI/RBI schemes can potentially be exploited to help undermine the CRS due diligence procedures.* This may lead to inaccurate or incomplete reporting under the CRS, in particular when not all jurisdictions of tax residence are disclosed to

the reporting Financial Institution. Such a scenario could arise where an individual does not actually reside in the relevant jurisdiction, but claims to be resident for tax purposes only in such jurisdiction and provides his Financial Institution with supporting documentary evidence (e.g. certificate of residence; ID card; passport; utility bill of second house), as illustrated by the below examples:

8. **Example 1:** New Individual Account – Account Holder falsely self-certifies tax residency and provides a tax residence certificate in support.

9. *X is an individual resident in jurisdiction F. In order to circumvent reporting under the CRS, X applies for “residency status” in jurisdiction M under its RBI program. This status requires X to purchase a property in jurisdiction M worth at least 500,000 Euro or to rent a property for a minimum of 40,000 Euro per year. It allows X to obtain tax residency in jurisdiction M without being taxed on any income that is not sourced in or remitted to jurisdiction M.*

10. *X opens a New Account with a Bank B in jurisdiction B and self-certifies to be resident for tax purposes in country M (including by presenting his tax residency certificate to Bank B in the on-boarding process). Although the CRS requires X to include all jurisdictions of residence for tax purposes in his self-certification, he omits to self-certify his tax residence in jurisdiction F. In addition, the AML/KYC documentation provided by X does not show any connection to jurisdiction F.*

11. *Bank B will identify X as a resident of country M and report the income and other information about the account to the tax authorities of jurisdiction B that will exchange the CRS information with country M, in compliance with the CRS. However, X is not taxed on the income in jurisdiction M. X continues to be a resident of jurisdiction F but the jurisdiction B does not exchange X's information with jurisdiction F, as a consequence of the outcome of the due diligence procedures applied by Bank B.*

12. **Example 2:** Pre-Existing Individual Account – use of tax residence certificates or passports as Documentary Evidence under the residence address test

13. *Y, an individual resident in jurisdiction G has an account with Bank S in jurisdiction S. Under the CRS, the Bank S will start reporting Y's account information to the tax authorities of jurisdiction S in 2018 that will in turn exchange the CRS information with the tax authorities of jurisdiction G.*

14. *In order to circumvent reporting under the CRS, Y has in 2016 applied for residence in jurisdiction S under its RBI scheme. To obtain this status, Y purchased a house in jurisdiction S worth at least 500,000 Euro.*

15. *Y has provided his permanent residence permit of jurisdiction S and utility bills relating to the house in jurisdiction S. As a consequence, and in line with the residence address test for Pre-existing Individual Accounts, the due diligence procedures applied by Bank S lead to the conclusion that Y is a resident of jurisdiction S. As such, there will be no reporting of CRS information about the account held by Y to jurisdiction G.*

2. High risk RBI/CBI schemes

16. Not all RBI/CBI schemes present a high risk of being used to circumvent the CRS. Our initial assessment is that the risk of abuse of CBI/RBI schemes is particularly high when the scheme has one or more of the following characteristics:

- The scheme imposes no or limited requirements to be physically present in the jurisdiction in question or no checks are done as to the physical presence in the jurisdiction;
- The scheme is offered by either: (i) low/no tax jurisdictions; (ii) jurisdictions exempting foreign source income; (iii) jurisdictions with a special tax regime for foreign individuals that have obtained residence through such schemes; and/or (iv) jurisdictions not receiving CRS information (either because they are not participating in the CRS, not exchanging information with a particular (set of) jurisdictions or not exchanging on a reciprocal basis); and
- The absence of other mitigating factors. Such measures could, for instance, include:
 - The spontaneous exchange of information about individuals that have obtained residence/citizenship through such a CBI/RBI scheme with their original jurisdiction(s) of tax residence; or
 - An indication on certificates of tax residence issued that the residence was obtained through a CBI/RBI scheme.

3. Importance of correctly applying existing CRS due diligence procedures

17. To a large extent, the circumvention of the CRS through the abuse of CBI/RBI schemes can be prevented by the correct application of the existing CRS due diligence procedures. Important in this regard are:

- The requirement to have a real, permanent physical residence address (and not just a PO box or in-care-of address) for the application of the residence address rule and the necessity to confirm the presence of a real, permanent physical residence through appropriate Documentary Evidence;
- The requirement to instruct Account Holders to include all jurisdictions of tax residence in their self-certification.
- The rule that Financial Institutions cannot rely on a self-certification or Documentary Evidence if they *know, or have reason to know*, that such self-certification or Documentary Evidence is unreliable, incorrect or incomplete.

4. Possible additional measures to combat the abuse of CBI/RBI schemes

18. The OECD is currently compiling a list of high risk schemes based on the above risk factors in order to raise awareness amongst stakeholders of the potential of such schemes to undermine the CRS due diligence and reporting requirements.

19. Moreover, on 11 December 2017, the OECD released a [consultation document](#) seeking stakeholder input on model mandatory disclosure rules requiring disclosure of CRS avoidance arrangements and offshore structures. These rules require promoters and other intermediaries to disclose arrangements for which it is reasonable to conclude that they will have the effect of circumventing CRS reporting. The adoption of such model mandatory disclosure rules will have a deterrent effect on the promotion of CBI/RBI schemes for circumventing the CRS and provide tax authorities with intelligence on the misuse of such schemes as CRS avoidance arrangements.

20. In addition to the above, the OECD is considering a range of additional approaches to prevent the abuse of CBI/RBI schemes. This may include both tax compliance and policy related measures and will take into account the possible role of all

stakeholders involved, including the jurisdictions offering these schemes, the tax administrations of jurisdictions participating in the CRS, financial institutions subject to CRS reporting, the intermediaries promoting the schemes and taxpayers.

21. In this regard, public input is sought both to obtain further evidence on the misuse of CBI/RBI schemes and on effective ways for preventing such abuse. Such input will be taken into account in determining the next steps that will be taken. Interested parties are invited to send their contribution by **19 March 2018** at the latest by email to CRS.Consultation@oecd.org. They should be addressed to the International Co-operation and Tax Administration Division, OECD/CTPA.