

Compilation of comments

**PUBLIC INPUT RECEIVED ON MISUSE OF
RESIDENCE BY INVESTMENT SCHEMES
TO CIRCUMVENT THE COMMON
REPORTING STANDARD**

17 April 2018



Table of contents

Association for Financial Markets in Europe (AFME) / UK Finance	3
Antigua and Barbuda	7
BDO Panama	16
Business and Industry Advisory Committee (BIAC)	18
Citizenship By Investment Association (CIPA)	20
CS Global Partners	22
Commonwealth of Domicia - Ministry of Finance	27
European Fund and Asset Management Association (EFAMA)	36
Fédération Bancaire Française (FBF)	39
Financial Transparency Coalition	41
Global Investor Immigration Council	47
Grenada Citizenship by Investment Committee	54
Henley & Partners Holdings Ltd	58
Investment Migration Council (IMC)	63
KPMG International	69
Lexhack, Italy - Pier Paolo Franco	71
Mark Morris	75
Pirola Pennuto Zei & Associati, Italy	79
S-RM Intelligence and Risk Consulting Limited, United Kingdom	83
Society of Trust and Estate Practicioners (STEP)	86
Transparency International	92

By email to: CRS.Consultation@oecd.org

19 March 2018

Dear Sir,

UK Finance¹ and AFME² response to the OECD consultation document on preventing abuse of residence by investment schemes to circumvent the CRS

Introduction and Executive Summary

1. UK Finance and AFME welcome the opportunity to respond to the OECD's consultation document entitled 'Preventing abuse of residence by investment schemes to circumvent the CRS' published on 19 February 2018.
2. We welcome that the OECD is consulting with business on its proposals. We believe that this approach is to the benefit of both policymakers and businesses and helps to avoid any unintended consequences arising from the OECD's initial proposals.
3. We recognise the importance of increasing transparency in cross-border transactions and promoting compliance with tax obligations. This is demonstrated by the significant investment financial institutions have made to ensure that they comply with the CRS and FATCA.
4. In order to maintain the integrity of the CRS regime, we recognise that it is important to prevent CBI (citizenship by investment) and RBI (residence by

¹ UK Finance is a new trade association which was formed on 1 July 2017 to represent the finance and banking industry operating in the UK. It represents around 300 of the leading firms providing finance, banking, markets and payments-related services in or from the UK. UK Finance has been created by combining most of the activities of the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

² AFME represents a broad range of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks and other financial institutions. AFME advocates stable, competitive and sustainable European financial markets, which support economic growth and benefit society. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

investment) schemes being used to artificially circumvent reporting under the CRS. It is, however, imperative that any rules enacted to identify and report on the abuse of such schemes are clear, certain, consistent and practical for businesses to implement across all participating jurisdictions.

5. Some of the risks described in the consultation seem to arise because governments issue certificates of residence which meet the definition of “documentary evidence” in section VIII, paragraph E(6) of the CRS. However, nonetheless, the certificates of tax residence can be used to disguise tax residence within the existing CRS regime. We call upon the OECD to engage with the governments issuing the documentation used in ‘high risk RBI/CBI schemes’, articulate the challenges these schemes present for the purposes of the CRS, and partner with these governments to address these challenges. We note that tightened due diligence procedures for financial institutions located in CRS compliant jurisdictions could be difficult to implement, and, will not, on their own, address the OECD’s concerns.
6. There are some additional practical steps that could be taken by financial institutions to highlight the need for full and accurate disclosure of all tax residences by clients in the wording of their CRS self-certification. This will be more effective if the obligation on financial institutions to collect information via a self-certificate is supported by measures to educate the account holders on the differences between tax residence, tax liability and citizenship and to impose a direct obligation on account holders to provide full and accurate information in self-certificates.
7. Our more detailed comments have been organised into the following four sections, mirroring the sections of the consultation document:
 - a. How CBI and RBI schemes can be exploited to circumvent the CRS;
 - b. High risk RBI/CBI schemes;
 - c. Importance of correctly applying existing CRS due diligence procedures;
 - d. Possible additional measures to combat abuse of CBI/RBI schemes.

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

8. RBI/CBI programs exist for multiple genuine commercial reasons e.g. to generate inbound financial investment. Moreover, investors may be influenced by benign factors such the right to reside in a certain location and may obtain tax residence status (e.g. though substantial presence, or centre of economic activity) once such right to reside is obtained.
9. From the financial institution’s perspective, if an account holder presents government issued evidence that meets regulatory standards and requirements to support an asserted tax residence status, there are limits as to what further

due diligence they can do. It is extremely difficult to expect businesses to monitor and assess, from a CRS perspective, all types of documents issued by governments globally. In particular, it could be extremely difficult for financial institutions to carry out additional factual investigation and legal analysis which would be necessary to determine if a person is in fact tax resident in the country issuing such certificate or in another country.

B. High risk RBI/CBI schemes

10. As noted above, we encourage the OECD to engage with the governments of jurisdictions offering 'high risk RBI/CBI schemes', articulate the challenges they present, and partner with them to address the OECD's concerns. For example, we believe that countries could require account holders to indicate on any certificate of residence (or government issued ID) if that residence or citizenship was obtained under an RBI/CBI scheme.
11. If there are particular jurisdictions operating RBI/CBI programs, and they are not willing to cooperate with the OECD, these jurisdictions could be specifically listed on the OECD's website. If the jurisdiction operating such scheme has a network of double tax treaties, the operation of treaty "tie breaker clauses" in such cases should be expressly set out.

C. Importance of correctly applying existing CRS due diligence procedures

12. We believe that helpful changes could be made to the model OECD self-certificate which is available on the OECD website. For example, additional information could be included in the declaration section of a CRS self-certificate reminding signatories that there are new CRS disclosure requirements for account holders under the OECD's proposed new mandatory disclosure requirements. The account holder could be required to represent that they have not taken any steps to try and circumvent CRS reporting and that they have declared all countries and jurisdictions where they are tax resident
13. As noted above, countries could require account holders to indicate on any certificate of residence (or government issued ID) if that residence or citizenship was obtained under a CBI/RBI scheme. However, we note that this would require clear rules on how financial institutions are expected to deal with this information. For example, the OECD would need to make clear if such a certificate would be excluded from the definition of "documentary evidence". In addition, we believe that this change should not apply retrospectively or require a review of due diligence carried out *prior to* such a change given the manual effort and likely substantial financial cost this would entail. We would also welcome clarification that a financial institution holding such a certificate in their

client files would not, by that fact alone, have reason to doubt the validity of a self-certificate. The status of the individual's tax residence is often based on complex fact patterns and validation of self-certificates should not depend on an in-depth investigation of these facts or independent legal analysis by financial institutions.

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

14. In practice, high net worth individuals are likely to be at greatest risk of using CBI or RBI schemes to circumvent the CRS. Therefore, any additional new measures need to be carefully targeted at those individuals and proportionate. We believe that this is likely to be addressed best using mandatory disclosure rules and spontaneous exchange of information by jurisdictions
15. As noted above, we believe that any new CRS measures should apply *prospectively*. Any rules which apply *retrospectively* could impose significant costs on industry and be extremely difficult to implement (e.g. if it was necessary to re-document existing customers).

19th March 2018

International Co-operation and Tax Administration Division
OECD/CTPA

Re: Antigua and Barbuda's Contribution to the Consultation on *Preventing Abuse of Residence by Investment Schemes to Circumvent the CRS*

Antigua and Barbuda presents the following matters for consideration with respect to the ongoing OECD-led consultation on the document titled *Preventing Abuse of Residence by Investment Schemes to Circumvent the CRS*. The OECD has recognized that an individual's interest in these programmes can arise from legitimate reasons to include greater mobility linked to visa-free travel, better education and job opportunities for children and the right to live in a country with political stability.

The OECD also recognizes the need for co-operation to prevent abuse of these programmes by criminal elements. Antigua and Barbuda remains firmly committed to being a responsible partner with the OECD to find workable and equitable solutions to our common challenges and to build on our shared values.

Further to the above, Antigua and Barbuda welcomes the recent EU decision which recognizes and acknowledges Antigua and Barbuda's commitment to reform our tax policies to address deficiencies identified by the EU. These reforms support the EU's aim to achieve worldwide optimal tax transparency. Our commitment includes working closely with the EU and other partners to implement the commitments made in a timely manner. These commitments are as follows:

1. to start exchanging under the Common Reporting Standards (CRS) by 30th September 2018
2. to become a signatory to the Multilateral Competent Authority Agreement by 31st December 2018. In this regard, Antigua and Barbuda has communicated its intention to the Global Forum Secretariat to exchange information with all EU countries
3. to sign and ratify the OECD Multilateral Convention on Mutual Assistance in Tax Matters
4. to review its legislative framework for international financial services, in particular the International Business Corporations regime, with a view to addressing by abolition or amendment any provisions that may be considered harmful taxation practices by 31st December 2018
5. to join the Inclusive Framework on Base Erosion and Profit Shifting (BEPS).

This Antigua and Barbuda response will focus on the following areas:

- (1) The Antigua and Barbuda Rationale for Adopting a CIP (Citizenship by Investment Programme)
- (2) The Due Diligence Process
- (3) Citizenship
- (4) Tax Residence
- (5) Recommendations on preventing misuse of the CIP to circumvent the CRS

The Antigua and Barbuda Rationale for Adopting a CIP/CBI

For small island developing countries such as Antigua and Barbuda, the decision to adopt this programme was made to bolster the economy in the face of declining revenues from tourism, a contraction of the overall economy as a direct consequence of the global financial crisis, and ineligibility for official development assistance and concessional financing to support development due to the country's classification as an upper middle income country. These factors posed and continue to pose an existential threat to the viability of our economy. After extensive consultation and research, the Antigua and Barbuda Citizenship by Investment Unit (the "CIU") was established in 2013 to administer the Antigua and Barbuda Citizenship by Investment Act 2013.

The need to diversify the local economy, which remains 70% percent dependent on tourism, has been recently re-highlighted during the 2017 Atlantic hurricane season. Our vulnerability and absence of resilience was starkly demonstrated to the world following the hurricanes. The devastation to the region was comprehensive. Antigua and Barbuda saw the equivalent of 25% of its GDP wiped out in 24 hours as the cost to rebuild Barbuda following Hurricane Irma emerged.

Further, Antigua and Barbuda's ability to attain and maintain the Sustainable Development Goals (SDG) has been supported significantly from revenues derived from the CIP. The country remains committed, with the support of friendly Governments and organizations, to attain the SDGs.

The Due Diligence Process

Antigua and Barbuda, like the OECD, is committed to ensuring that its economic programmes do not directly or indirectly provide loopholes for those involved in undesirable and illegal activities such as terrorism, human smuggling and trafficking, trafficking of illegal narcotics, money laundering, and tax evasion. Antigua and Barbuda condemns any such activity as contrary to its laws and norms and will take swift and decisive action against any person, natural or corporate, implicated in such activities.

From the onset, we unequivocally state that there is no representation on the part of Antigua and Barbuda that the economic significance of the CIP to our economy presents a carte blanche to gloss over or compromise standards. On the contrary, we are fiercely committed to maintaining the required standards in the interest of our economy and people but also as part of our shared obligation to be a responsible partner in the fight against cross border crimes. We have built a team of world class professionals supported by world class due diligence experts and have consistently demonstrated to the OECD, the EU, and the FATF that Antigua and Barbuda is committed to fully co-operate at the international level as a responsible and accountable tax transparent jurisdiction. As such, we set out the due diligence process that underpins our CIP.

The CIU is staffed with a team of highly competent compliance experts who are knowledgeable in AML/CFT trends, evolving international best practice standards, and legislative requirements. These persons have been trained in cybercrime investigation and counter drug intelligence.

The CIU utilizes a multi-step approach to due diligence. Since 2014, the due diligence process has evolved from a two-tiered approach (open-source checks and private due diligence firms) to include pertinent intelligence received from regional and international law enforcement and intelligence agencies. This multi-tiered approach is implemented as follows:

1. Licensed Agents¹ are expected to conduct a first level of due diligence before the application is submitted to the CIU.
2. Upon receipt of the vetted application from the CIU's Operations team, the CIU Compliance team conducts web-based or open-source searches on the main applicant and all dependents aged 12 years and over using Thompson Reuters World Check, Interpol Most Wanted list, FBI Most Wanted Terrorist List, United Nations Al-Qaida Sanctions List, Office of Foreign Assets Control List, in addition to other lists for international financial

¹ Citizenship applications can only be submitted to the CIU through Local Licensed Agents. To become a Licensed Agent, the applicant must subject himself to a fit and proper test, and must demonstrate:

- (i) He or she is a natural person who is a citizen of Antigua and Barbuda and who is lawfully ordinarily resident for a period of not less than seven years
- (ii) He or she has a place of business in Antigua and Barbuda
- (iii) He or she has the professional qualification, ability, resources and integrity to perform the role
- (iv) Professional indemnity cover at the minimum of EC\$3 million is in place.

There is also an annual licence renewal process for Licensed Agents.

sanctions; search engines such as Google and KYC360.com, and social media networks including Facebook and LinkedIn.

3. As an advanced step, the CIU contracts several private due diligence firms who are recognized reputable experts in the field of investigations and who provide these services to international governments, banks and Fortune 500 companies. The firms currently contracted are:
 - ☐ BDO
 - ☐ Exiger
 - ☐ SR-M
 - ☐ Thompson Reuters

Certified/notarized copies of identification documents, including passports, for the applicant and each dependent who has attained the age of 12 are forwarded to the firm with best resources in the significant jurisdiction(s) and other territories with which the applicant is affiliated or has been resident for any period exceeding 6 months. The firm in turn provides a formal comprehensive report to the CIU upon completion of their investigations.

4. To ensure full coverage of the applicant's background checks, identification documents are also sent to the Joint Regional Control Centre arm of the CARICOM Implementation Agency for Crime and Security (IMPACS) for feedback and intelligence.
5. A decision on approval or denial is taken only after all results from the collective background searches have been received by the CIU and a full analysis is completed on the application.
6. As a further control measure, a restricted countries list was established stipulating countries/nationalities which are not eligible to apply under the Programme unless the applicant can lawfully demonstrate that he or she migrated before the age of majority and maintains permanent residency in the United Kingdom, the United States of America, Canada, the United Arab Emirates, New Zealand, Saudi Arabia or Australia. There are currently 7 countries on this list:
 - (i) Afghanistan

- (ii) Iran
- (iii) Iraq
- (iv) Libya
- (v) North Korea
- (vi) Sudan
- (vii) Yemen

Citizenship Only

The economic citizenship programme of Antigua and Barbuda allows persons to have a second citizenship, essentially, a dual citizenship. This citizenship does not yield permanent residence, nor tax residence. There is very little scope for our dual citizens to circumvent CRS. Indeed, dual citizenship of Antigua and Barbuda does not allow citizens a greater possibility of circumventing CRS any more than a dual citizenship obtained by other means (parents of two different countries; marriage etc).

Tax Residence

Antigua and Barbuda citizenship does not automatically award residency, or tax residency. Tax residency in Antigua and Barbuda is granted after fulfilling a residency requirement of 183 days or six months under the Income Tax Act. Thus without automatic tax residency and with our 183-day residency requirement, the vehicle through which a person obtains dual citizenship, CBI or otherwise, does not influence their ability to circumvent CRS.

Consequently, a citizen of Antigua and Barbuda is in no greater or stronger position to avoid properly declaring their tax status than a person holding a dual citizenship.

High Risk Characteristics

Antigua and Barbuda considers that its CIP/CBI scheme should not be classified as High Risk for the following reasons:

1. Citizenship does not automatically award tax residency. Tax residency is based on a requirement of 183 days in the jurisdiction;
2. Antigua and Barbuda tax law is applicable to residents who have met the requirements above.
3. Antigua and Barbuda has committed to:
 - start exchanging information under the CRS by 30th September 2018;
 - to become a signatory to the Multilateral Competent Authority Act by 31st December 2018
 - to sign and ratify the OECD Multilateral Convention on Mutual Administrative Assistance in tax Matters
 - to review its legislative framework for international financial services to abolish or amend any provisions that might be considered harmful tax practices by 31st December 2018
 - to join the Inclusive Framework on BEPS or implement the minimum standards by 31st December 2018.

Recommendations on Preventing Misuse of the CIP to Circumvent the CRS

The OECD consultation paper identifies ways in which CIP schemes can be exploited to circumvent the CRS:

1. Exploitation of the schemes in an attempt to circumvent the CRS
2. Identification of the types of schemes that present a high risk of abuse
3. Reminding stakeholders of the importance of correctly applying relevant CRS due diligence procedures in order to help prevent such abuse.

Recommendations Pertaining to Exploitation of the Schemes in an Attempt to Circumvent the CRS

Antigua and Barbuda recommends that any assessment under this heading be assessed on a country by country basis taking into account variations that exist in individual programmes and mitigating factors.

Antigua and Barbuda commits to reviewing all existing legislation to ascertain if CRS requirements for a taxpayer to identify all their jurisdictions of residence for tax purposes are adequately reflected with detailed and effective processes for ongoing monitoring and clear penalties for non-compliance.

Antigua and Barbuda further undertakes to work with contracted due diligence firms and Licensed Agents to strengthen the due diligence process including monitoring where necessary to ascertain that declarations of tax residency are accurate and complete.

Recommendations Pertaining to the OECD plans to identify schemes that present a High Risk of Abuse

1. Antigua and Barbuda recommends that any assessment of high risk factors again be assessed on a country by country basis taking into account variations that exist in individual programmes and mitigating factors.
2. Antigua and Barbuda repeats the matters raised above to support its position that its CIP/CBI programme is not a high risk programme.

Recommendations on the Importance of Correctly Applying the Standards

Antigua and Barbuda notes the statement that to a large extent, the circumvention of the CRS through the abuse of the CBI/RBI schemes can be prevented by the correct application of the existing CRS due diligence procedures. Antigua and Barbuda has already committed to the CRS which commitment includes correct application.

Antigua and Barbuda looks forward to the next steps in the process and re-affirms its wish to work with the OECD on this important matter in an open and equitable manner. Where possible, Antigua and Barbuda invites the OECD/CTPA team to hold a meeting with representatives of our CIU, due diligence partners and regulatory officials in Paris or in St. John's at a mutually agreeable time in the near future.



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March 06, 2018

International Co-operation and Tax Administration Division,
OECD /CTPA
Via e-mail: CRS.Consultation@oecd.org

Re: Consultation document / Preventing abuse of residence by investment schemes to circumvent the CRS

Dear Sirs,

We are writing to respectfully and timely submit our contribution in response to the document in re (hereinafter referred to as "the consultation document").

It is our understanding that the consultation document calls for evidence on the misuse of CBI/RBI schemes, as the consultation document defines such terms, and to obtain input on effective ways for preventing such abuse. We refer herein only to the latter purpose of the consultation document. Accordingly, the primary intent of this letter is to provide our views on ways to prevent that CBI/RBI schemes be used to circumvent the CRS by concealing the actual [or other tax residences] of the individual account holder himself or of controlling persons in Passive Non-Financial Entities (Passive NFEs).

We believe that the focus of the main efforts to prevent circumvention of the CRS should be on the beneficial owners themselves rather than on reporting financial institutions since they already bear a compliance heavy burden by implementing CRS.

In this line of thought, we believe that it would be convenient, concurrently:

1. To establish the regulatory presumption that obtaining citizenship or residence by investment or by any other means¹ do not equate to loss of the original tax residence [for CRS reporting purposes only] during the following two full calendar years after the year in which the individual obtained citizenship or resident status in a given country by any means.
2. To establish the regulatory requirement that an individual that obtained CBI or RBI or by any other means, includes his original tax residence as a current tax residence [for CRS reporting purposes only] in the corresponding CRS self-certification submitted to the financial institution that maintains the account, when two full calendar years have not passed after the year in which such individual obtained CBI or RBI or by any other means.

¹ Like under any other special regime that favors nationals of specific countries or individuals with a particular set of technical or professional skills or employees of certain companies.

3. To establish the regulatory requirement that self-certifications be signed under oath and that specific sanctions apply to the signing individual when misrepresenting his own tax residence status for CRS purposes.

Thank you very much for your time and consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Romero', with a large, sweeping flourish extending to the left.

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Dr. Achim Pross

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Submitted by e-mail: CRS.Consultation@oecd.org

19 March 2018

RESPONSE TO PUBLIC DISCUSSION DRAFT: MISUSE OF RESIDENCE BY INVESTMENT SCHEMES TO CIRCUMVENT THE COMMON REPORTING STANDARD

Dear Achim,

Business at OECD (BIAC) supports a targeted approach, administrable by business, for preventing taxpayers from seeking to circumvent the common reporting standard (CRS). These comments respond to the [public discussion draft](#) issued on 19 February and suggest a targeted approach for preventing taxpayers from circumventing the CRS by misusing residence by investment (RBI) and citizenship by investment (CBI) schemes.

The recently-issued [guidance](#) on mandatory disclosure rules (MDRs) for addressing CRS avoidance arrangements and offshore structures provides a commendable example of a targeted approach. We appreciate greatly that financial institutions (FIs) complying fully with their CRS obligations should not be unduly burdened when engaging in routine commercial transactions with customers. Specifically, the guidance effectively is limited to those parties, arrangements, and structures “that are likely to present the greatest risk from a compliance perspective.”¹ To that end, the “reasonably expected to know” standard is applied “by reference to a Service Provider’s actual knowledge based on readily available information and the degree of expertise and understanding required to provide the Relevant Service.”²

We suggest that the guidance regarding CRS circumvention through RBI and CBI schemes misuse likewise target those situations “likely to present the greatest risk from a compliance perspective.” In this situation, like in the MDR situation, FIs complying fully with their CRS obligations should not be unduly burdened when engaging in routine commercial transactions with customers.

To that end, we suggest that the OECD focus first on “high risk” RBI and CBI schemes. More specifically, we encourage the OECD and the Global Forum, through its peer review process, to examine potentially problematic RBI and CBI schemes based upon the characteristics identified in

¹ <http://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.htm>, page 11.

² Id. at 16.

the discussion draft. FIs should not be the first line of defense against misuse of these schemes since, as the discussion draft notes, there may be legitimate reasons why individuals would be interested in RBI or CBI schemes.³

Once a published list of targeted jurisdictions is established, FIs would be positioned to assist in preventing misuse of these schemes. Importantly, however, FIs' responsibilities generally should not be expanded significantly beyond complying fully with their CRS obligations. Two situations should be distinguished.

First, when a new customer claiming tax residency in a "targeted" jurisdiction seeks to open an account, FIs should follow their normal CRS-related obligations. The only additional obligation, perhaps, would be a requirement to request proof of effective taxation; this proof, for example, could be a tax notice from a "targeted" jurisdiction.

Second, when an FI becomes aware that an existing customer has a tax residence change of circumstances—and the new tax residence is in a "targeted" jurisdiction—the FI could be required for some period to report the client to both the former and the "targeted" tax residence jurisdiction. This dual reporting would provide the first jurisdiction with the opportunity to inquire about the circumstances of the claimed new tax residence.

This approach, in our view, places the appropriate level of responsibility for preventing the misuse of RBI and CBI schemes on: (1) Governments to identify jurisdictions with insufficiently robust CBI and RBI schemes; (2) the targeted jurisdictions; and (3) the targeted jurisdictions' purported residents/citizens.

We appreciate your attention to this important issue. If we you would like to discuss our comments further, please feel free to contact us.

Sincerely,



Will Morris
Chair BIAC Tax Committee



Keith Lawson
Chair BIAC Business Advisory Group on CRS

cc: John Peterson
Philip Kerfs

³ <http://www.oecd.org/tax/exchange-of-tax-information/consultation-document-preventing-abuse-of-residence-by-investment-schemes.pdf>, page 2.



19 March, 2018

International Co-operation and Tax Administration Division,
OECD/CTPA

By email: CRS.Consultation@oecd.org

Dear Sir / Madam,

The Association of the Citizenship By Investment (CIPA) is a body consisting of the various Heads of the Citizenship By Investment Units in the islands of St Kitts & Nevis, Antigua & Barbuda, Dominica, St Lucia and Grenada. The primary role of this Association is to ensure that the integrity of the Citizenship By Investment programme is maintained. It is therefore an opportunity for the Association to participate in the discussion and provide its comments to the OECD consultation document, **'Preventing abuse of residence by investment schemes to circumvent the CRS'**.

It must be noted that the Citizenship By Investment programme as legislated in the various islands requires applicants to submit applications for citizenship and have either no or minimal residence requirements. Therefore, the primary focus of such programmes is to allow international mobility given the islands' visa -free status with many countries and therefore tax residency is not matter of consideration for those applicants.

We recognise, however, that some of the islands have introduced a Residency programme which allows for the obtaining of residency status. It is our view that Citizenship and Residence by Investment programmes do not offer a solution for avoiding the legal obligation of reporting pursuant to the requirements of the CRS. These programmes grant a right of citizenship of a jurisdiction or a right to reside in a jurisdiction. They generally do not provide tax residence. It is important to distinguish that 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 Residence by Investment programmes, they do not by themselves affect the tax residence in the original country of residence of the individual.

As such, the obligation falls on the taxpayer to self-certify all their jurisdictions of residence for tax purposes. The primary issue that has to be addressed is when there is misrepresentation by the taxpayer. A financial institution cannot make assumptions or detect misrepresentation in all instances. Any opportunity or loophole that does not oblige this taxpayer to provide the necessary information must be amended and / or closed.

We propose that financial institutions could request that their clients provide more specific information to help them determine the risk profile of their clients. These can include, but not limited to:

- To list the country(ies) for which they currently hold a temporary or permanent residence visa;
- To list the country(ies) for which they hold citizenship/a passport;
- To list the country(ies) where they were physically present for more than 89 days (at midnight) over the preceding 12 months; and
- To list the country(ies) for which they declare being a Tax Resident.

By adding these additional verifications, the financial institutions can risk weight the client in terms of CRS due diligence and then decide if they need to request further information. It is accepted that Citizenship and Residence by Investment programmes are deemed to be high risk by financial institutions and therefore more reporting and compliance must be required to ensure quality control.

Our association is committed to adhering to the highest standards of due diligence for all applicants and continue to refine this process to ensure consistent reporting and cooperation amongst the members.

We submit that there should be no tolerance for illegal behavior and misrepresentation in this area.

Most applicants do not abuse the system and fully report their income to the tax authorities. Individuals can take all permissible steps to reduce their tax bill but misrepresentation of the facts or mere omission is simply illegal and must be appropriately dealt with.

Thank you for your consideration and please do not hesitate to contact me if you have any questions or further requirements.

Les Khan
Chair
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19 March 2018

Dear Sir or Madam,

**INPUT DOCUMENT RE THE CONSULTATION DOCUMENT ON PREVENTING ABUSE OF
RESIDENCE BY INVESTMENT SCHEMES TO CIRCUMVENT THE CRS**

CS Global Partners welcomes the opportunity to provide its input on the Consultation Document, issued on 19 February 2018, on Preventing Abuse of Residence by Investment Schemes to Circumvent the CRS.

CS Global Partners is a legal advisory firm with years of experience in the investor immigration market. We operate with two distinct branches, the first providing advice to governments seeking to introduce, develop, or promote their citizenship or residence by investment programmes, and the second guiding individuals in selecting the best option for their next citizenship or residence. CS Global Partners is headquartered in London, United Kingdom, and has a number of offices across the world.

CS Global Partners commends the OECD for its efforts to eliminate tax evasion and other financial fraud by the promotion of global measures such as the Common Reporting Standard (CRS). We further commend the OECD for undertaking to identify avenues that may be used to circumvent the CRS. Nonetheless, we believe the OECD's concerns with respect to the exploitation of citizenship by investment to be misplaced, especially with respect to jurisdictions that solely offer citizenship by investment.

This input document will seek to provide a rationale for why certain citizenship by investment jurisdictions should not be associated with the circumvention of the CRS. It will further highlight measures that may be adopted by other citizenship by investment and residence by investment jurisdictions to minimise the opportunity for CRS circumvention.

The views contained in this input document are those of CS Global Partners and not necessarily those of its clients.

A. THE CASE FOR THE PURE CITIZENSHIP BY INVESTMENT JURISDICTION
a. Pure Citizenship by Investment Does Not Entail Residence or Tax Residence

Pure citizenship by investment programmes offer citizenship only. The applicant makes a contribution to the economy of a given jurisdiction, and that jurisdiction, after appropriate due diligence checks, affords the applicant citizenship. At no point of the citizenship by investment process does the applicant receive residence, tax residence, or any other status other than that of a registered (or naturalised) citizen of the jurisdiction.

Non- pure citizenship by investment jurisdictions are those where residence is a prerequisite to, or is received concurrently with, citizenship. Residence by investment jurisdictions offer residence only, although the applicant may later satisfy the requirements for a separate application for citizenship.

CS Global Partners classifies the Commonwealth of Dominica and St Kitts and Nevis as pure citizenship by investment jurisdictions. St Lucia and Grenada, while not offering a residence by investment programme per se, present elements of residence by investment jurisdictions and are therefore non-pure citizenship by investment jurisdictions. Antigua and Barbuda, Cyprus, and Malta, offer both non-pure citizenship by investment and residence by investment.

b. No Documents Evidencing Tax Residence

The Consultation Document notes that "CBI/RBI schemes can potentially be exploited to help undermine the CRS due diligence procedures." It then specifies that such exploitation may occur where a person falsely claims to be a tax resident of one jurisdiction by providing his or her Financial Institution with documents purporting to evidence such tax residence. It further provides a list of such documents, including: certificates of residence, ID cards, passports, and utility bills of a second house).

It is our concern that the OECD may be confusing the documentation that is provided to successful applicants in pure citizenship by investment jurisdictions with the documentation that is provided to an applicant for non-pure citizenship by investment or residence by investment.

In pure citizenship by investment jurisdictions, a successful applicant applies for, and receives, a certificate of registration (sometimes called a certificate of naturalisation). This certificate stands as evidence that the applicant has been registered as a citizen of the jurisdiction issuing the certificate. It is by producing this certificate alone that an economic citizen can establish his or her claim to citizenship. The OECD does not list certificates of registration as documents that may be misused as evidence of tax residence. This is a proper determination as the registration certificate does nothing but certify that the economic citizen shall be a citizen of the certificate-awarding jurisdiction as of a given date. No statement is made as to the economic citizen's residence or tax residence.

Pure citizenship by investment jurisdictions do not issue any other official document as part of the citizenship by investment process. All other documents, including passports, must be applied for as part of a distinct, non-citizenship by investment procedure.

Upon receipt of their registration certificates, economic citizens habitually apply for passports, following the same procedures that must be followed by any other citizen of the jurisdiction. All pure citizenship by investment jurisdictions list the economic citizen's name, date of birth, gender, and, significantly, place of birth. There is no attempt on the part of these jurisdictions to conceal the fact that economic citizens were not born in the jurisdiction, and that the economic citizen may thus also be a citizen of another jurisdiction.

The OECD lists passports as documents that may be misused as evidence of tax residence. We believe this to be an improper determination on the OECD's part, as passports alone cannot evidence residence or tax residence. A passport serves as evidence of citizenship during the passport's period of validity (and, even then, it may not do so if the passport has been revoked by the issuing authority).

c. No High-Risk

The Consultation Document notes that "the risk of abuse of CBI/RBI schemes is particularly high when (1) 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, (2) the scheme is offered by [a jurisdiction with friendly tax regimes or that is not receiving CRS information], and (3) [there is an] absence of other mitigating factors [such as] 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.”

It is our contention that, once more, there is a failure to distinguish between pure citizenship by investment jurisdictions and non-pure citizenship by investment jurisdictions.

i. Physical Presence

In pure citizenship by investment jurisdictions, the applicant receives citizenship only. With economic citizenship comes the right to reside in the jurisdiction, but at no time is the economic citizen forced to assert this right. As for most persons holding dual or multiple citizenships, there is no requirement that those persons be present in the jurisdiction of citizenship in order to retain that citizenship. Indeed, for most jurisdictions across the globe, physical presence is not a precondition to citizenship, with the principle of *jus sanguinis* providing a legal basis for persons to become citizens of a jurisdiction by virtue of parentage alone.

It flows from the above that, while an economic citizen of a pure citizenship by investment jurisdiction need not be physically present in that jurisdiction to obtain or maintain citizenship, he or she may also not use his or her status as an economic citizen to demonstrate physical presence in the jurisdiction. Again, citizenship alone would do very little to assist any attempt to circumvent the CRS.

ii. Friendly Tax Regime

It is not the fact that a jurisdiction has a friendly tax regime that presents a problem under the CRS; problems arise when a self-certifying person successfully, and deceitfully, claims to be a tax resident of one jurisdiction to avoid paying higher taxes in another jurisdiction. The solution, therefore, need not be an overhaul of tax regimes, or a condemnation of jurisdictions with friendly tax regimes, but rather a demand for evidence on the part of the self-certifying person to ensure tax residence is reported accurately.

The most straightforward system to achieve this is for the CRS to request clearer evidence of tax residence.

The OECD has noted that document such as certificates of residence, ID cards, and utility bills may be misused by self-certifying persons. This may, in certain circumstances, be true, particularly where certificates of residence or ID cards are issued to persons who do not actually reside in a jurisdiction. In Greece, for example, permanent residence can be maintained without physical presence. In Portugal, permanent residents with Golden Visas need only show physical presence for seven days in their first year of residence, and for fourteen days every two years thereafter. Non-pure citizenship by investment nations can also present a problem. Grenada, for example, whilst not offering a formal residence by investment programme, automatically issues economic citizens with a ‘permanent residence certificate,’ which indicates that the person is “permitted to reside permanently in Grenada.” Additionally, Grenada affords economic citizens the right to apply for, and receive, a ‘Grenada permanent residence’ card upon payment of a fee. Grenadian economic citizens may apply for and receive this card even if they do not hold an address in Grenada. In this case, the card is issued with the economic citizen’s foreign address. It has already been noted in this input document that pure citizenship by investment jurisdictions do not issue these documents to their economic citizens by virtue of their participation in a citizenship by investment programme.

There is some scope for the OECD to target countries that issue documents evidencing permanent or tax residence without actually requiring physical presence. A more effective means would however be to request that tax residents show compliance with the tax residence requirements of the jurisdiction they select. Such evidence includes bank statements or other documents demonstrating regular expenditure in a given jurisdiction, employment letters, and evidence of registration with national services, such as health services.

iii. Exchange of Information

All pure citizenship by investment jurisdiction, that is to say, the Commonwealth of Dominica and St Kitts and Nevis, are participating jurisdictions for purposes of the CRS. Dominica committed to exchanging information from 2018 onwards. St Kitts and Nevis has made the same commitment, and, in December 2016, passed both primary and secondary legislation, in the form of the *Common Reporting Standard (Automatic Exchange of Financial Account Information) Act, 2016 (Act No. 13 of 2016)* and of the *Common Reporting Standard (Automatic Exchange of Financial Account Information) Regulations 2016 (S.R. & O. No. 32 of 2016)*. St Kitts and Nevis also provided a list of low risk non-reporting financial institutions and excluded accounts.

iv. Certification of Tax Residence

Because no certificate of tax residence is issued in pure citizenship by investment jurisdictions by virtue of the citizenship by investment process alone, there can be no indication on a certificate of tax residence that such tax residence was obtained by virtue of the tax resident participating in a citizenship by investment programme.

Indications on certificates of tax residence should be considered in jurisdictions offering non-pure citizenship by investment programmes or residence by investment programmes only.

d. Due Diligence

The OECD has stressed the importance of correctly applying existing CRS due diligence procedures. It lists, among these, confirming real, permanent physical residence address, instructing persons to self-certify all jurisdictions of tax residence, and directing financial institutions to signal any self-certification that they believe or have reason to believe is unreliable, incorrect, or incomplete. The due diligence performed by pure citizenship by investment jurisdictions on their applicants for economic citizens far exceeds the due diligence recommended in the Consultation Document.

The credibility of pure citizenship by investment jurisdictions rests largely on their ability to thoroughly scrutinise applicants to ensure that they are persons seeking a citizenship solution not to place themselves outside the reach of the law, or to facilitate future criminal activity such as tax evasion, but to enjoy the many legitimate benefits that come with alternative citizenship. This includes greater mobility, and, more widely, freedom of the person and economic freedom.

To achieve this goal, pure citizenship by investment jurisdictions have laid down in their legislation the requirement for a dedicated 'citizenship by investment unit' tasked with the extensive collection of information and supporting documents, and for the use of independent professional firms whose expertise lies in investigating the character, identity, and activities of both persons and entities.

Citizenship by investment units in pure citizenship by investment jurisdictions are highly trained in anti-money laundering and terrorist financing, as well as in document review and recognition procedures. All applications must be submitted to the relevant unit, such that each is reviewed by a practiced and consistent eye. To further modernise operations, the St Kitts and Nevis Citizenship by Investment Unit pioneered the first online case management system for citizenship by investment, while the Dominica Citizenship by Investment Unit adopted one shortly after.

Applications are rejected by the relevant citizenship by investment unit unless all forms and supporting documents are provided by the applicant. Forms contain in-depth enquiries into main applicants and all dependants, focusing on their personal details, as well as family, education, business, and criminal history. Emphasis is also placed on applicants' residence and employment history, with applicants having to list all addresses where they lived and places where they worked for the past 10 years. Information on source of funds is required, with details ranging from annual net income to total net worth. In both the Commonwealth of Dominica and St Kitts and Nevis, applicants are specifically asked "Have you ever been

under investigation by any law enforcement agency or tax authority in any country?” and denied citizenship upon the giving of a positive answer that cannot be adequately explained.

Information provided must be corroborated by supporting documentation. To evidence a clean criminal record, for example, applicants under the Dominica Citizenship by Investment Programme must provide police records from their country of birth, country or countries of citizenship, country of residence, and any country in which the applicant has resided in the past 10 years. To evidence a clear source of funds, applicants must provide, where applicable, a letter of employment or financial statements, as well as 12 months bank statements, a detailed business background report, and relevant notarised affidavits.

Both the information and documents provided are reviewed by the relevant citizenship by investment unit and by the professional firm of the unit’s choosing. Professional firms are selected for their reputability and ability to form a comprehensive picture of each applicant. Bespoke online and on-the-ground research is performed for each applicant, whose information is also passed to supra-governmental partners such as collaboration the CARICOM’s Implementing Agency for Crime and Security (IMPACS) and Joint Regional Communications Centre (JRCC), as well as Interpol. Sanctions and criminal lists, including those of other governments, are also reviewed.

In their legislation, pure citizenship by investment jurisdictions have mandated the denial of citizenship to anyone who provides false information, has a serious criminal record, knows to be or should know to be the subject of a criminal investigation, is a potential security risk both to the relevant jurisdiction or to any other country, is or has been involved in any activity likely to bring disrepute to the relevant jurisdiction, or has been denied an entry visa by a country with whom the relevant jurisdiction has a visa-free agreement. Retrospective action is also allowed by legislation, such that any applicant who is subsequently found to have provided false or incorrect information, or, in the case of the Commonwealth of Dominica, concealed any material fact, may be deprived of his or her economic citizenship.

Extensive due diligence separates pure citizenship by investment jurisdictions from many non-pure citizenship by investment jurisdictions and residence by investment jurisdictions. Some examples of jurisdictions where greater due diligence could be applied are noted below.

Recently, Naomi Hirst, of Global Witness, outlined that neither the British Government nor applicants’ banks were responsible for security checks on the around 3,000 individuals who became UK permanent residents through its Tier 1 Investor Visa Programme between 2008 and 2015.

In discussing the ability of Politically Exposed Persons (PEPs) to achieve residence through Portugal’s Golden Residence Programme, European Parliamentarian Ana Gomes revealed she “talked to the Financial Research Unit [of the Portuguese Judicial Police] and the due diligence investigations that are made are minimal.”

In Dubai, where permanent residence may be received in four weeks if an applicant purchases real estate worth at least 1 million dirhams or registers a company, applicants face undemanding documentary requirements. In addition to basic documentation such as passports and passport photos, applicants generally need only present a recommendation letter from a bank or bank statements, a local utility bill, and a certificate of good conduct issued in the United Arab Emirates.

Because due diligence ensures that persons have not performed, and are unlikely to perform, illicit acts such as tax evasion by the exploitation of the CRS, it is in the interest of the OECD to promote robust due diligence procedures, as are currently performed by pure citizenship by investment jurisdictions, and to encourage their use across non-pure citizenship by investment and residence by investment jurisdictions alike.



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19th March 2018

Head, International Co-operation and Tax Administration Division
OECD/CTPA
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75775 Paris Cedex 16
FRANCE

By email to: CRS.Consultation@oecd.Org".

Dear Sir/Madam,

**SUBJECT: RESPONSE TO THE OECD CONSULTATION DOCUMENT ON PREVENTING ABUSE OF
RESIDENCE BY INVESTMENT SCHEMES TO CIRCUMVENT THE CRS**

I. Dominica's Position

1. The Commonwealth of Dominica has been operating its Citizenship by Investment Programme since 1993. The Programme affords individuals the opportunity to become citizens in exchange for a contribution to Dominica's economy.
2. The Commonwealth of Dominica welcomes the opportunity to respond to the OECD *Consultation Document on Preventing Abuse of Residence by Investment Schemes to Circumvent the CRS* given the Consultation Document's references to citizenship by investment and given the significance of the Dominica Citizenship by Investment Programme for the development of Dominica's economy and the wellbeing of citizens.
3. The Commonwealth of Dominica shares in the OECD's goal of increasing global tax transparency and has committed to working with the OECD and to first exchange of information under the CRS by 2018.
4. The Commonwealth of Dominica is at all times invested in upholding the interests of the people of Dominica and of the Caribbean region, and as such is fully committed to protecting Dominica's integrity and reputation, as well as that of its Citizenship by Investment Programme. Therefore, at no cost, and particularly in light of the economic significance of the

"Embracing the Challenge: Rethink, Rebuild, Transform"

Citizenship by Investment Programme, does the Commonwealth of Dominica intend to act to permit the circumvention of international laws and regulations such as the CRS. Rather, the Commonwealth of Dominica seeks to continually enhance its checks on, and protect its people and the international community from, illicit actors, be it in respect of its Programme or the unlawful use of the nation as a tax haven. This is reflected both in the citizenship by investment and tax legislation of the nation.

5. The Commonwealth of Dominica is mindful of the OECD's aims, as enshrined in the Convention on the Organisation for Economic Co-operation and Development, and would like to draw attention to Article 1(b): "to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development." Citizenship by investment is a key driver of economic growth in Dominica, a country defined by the United Nations Department of Economic and Social Affairs as a 'small island developing state.' Using data from April 2017, the International Monetary Fund (IMF) predicted that the Citizenship by Investment Programme would soon contribute around 10 percent of Dominica's GDP, having already contributed around five percent of GDP in the 2015 fiscal year (excluding investments in real estate and contributions not transferred to the national budget). Citizenship by investment is even more essential to Dominica in the aftermath of Hurricane Maria, which, on 18 September 2017, caused damages and losses of about US\$1.37 billion, approximately 226 percent of Dominica's 2016 GDP.

II. Distinguishing Between Citizenship and Residence by Investment

1. The economic citizenship of Dominica yields neither automatic permanent residence nor tax residence. In fact, there is very little scope for persons to use their status as economic citizens of Dominica to circumvent the CRS.
2. It is important to draw a distinction between jurisdictions that, like Dominica, offer citizenship by investment programmes only, and those that offer residence by investment programmes (including those that offer both residence and citizenship by investment).
3. The number of nations offering residence by investment programmes is vast. Of the OECD member states, 32 offer residence by investment programmes. Canada, Greece, Portugal, Spain, the United Kingdom, and the United States are among this group. Outside of the OECD, other nations offering residence by investment include, to name only some, Cyprus, Malta, and the United Arab Emirates. Within the OECD only one nation, Austria, offers citizenship by investment.
4. Permanent residence, whether acquired by investment or by other means, is a legal status whereby a person is given the right to reside in a nation. Despite its name however, permanent residence does not necessarily imply a duty on the person to live permanently in a given nation, or even to be physically present in that nation.

III. Dominica Does Not Offer a Residence by Investment Programme. It Exclusively Offers a Citizenship by Investment Programme

1. Under Dominica's Citizenship by Investment Programme, a single applicant may receive citizenship upon the making of a US\$100,000 contribution to the Economic Diversification Foundation (EDF) or upon the purchase of Government-approved real estate valued at a minimum of US\$200,000. Due diligence, processing, and naturalisation certificate fees apply.
2. **Receipt of Dominican citizenship through the Citizenship by Investment Programme puts persons in no better position to avoid properly declaring their tax status under the CRS than would be the case for any person holding dual citizenship.**
3. Upon completion of the citizenship by investment process, an applicant under Dominica's Citizenship by Investment Programme receives one document: a 'certificate of naturalisation.' **Dominica does not issue residence certificates or residence cards to its economic citizens, nor does it allow for such certificates to be issued as part of its Citizenship by Investment Programme.**
4. As a second, separate step, an economic citizen of Dominica may apply for and receive a passport. This is an independent process that entails submission of a passport application form (Form A; 'Application for a Passport and Instructions on How to Complete'), of the person's birth certificate, and of the person's naturalisation certificate. Where applicable, evidence of change of name must also be submitted. The birth certificate must be submitted even if it had been previously received by the Citizenship by Investment Unit – standing as further evidence of the independence of the two processes. No other document is required to process and issue a Dominican passport. **At no stage is an economic citizen in Dominica obliged to obtain a national insurance number or any similar form of identification to apply for and receive a passport.**
5. Dominican passports issued to economic citizens evidence the place of birth of the economic citizen, thereby highlighting the status of the economic citizen as someone who likely acquired Dominican citizenship by means other than birth.
6. Most economic citizens of Dominica become dual citizens, a status that is ever more common given the current global realities. While your consultation document attempts to draw a link between CBI and circumvention of CRS, dual citizens, notwithstanding the means by which they have become dual citizens, can claim association to their second nation at any time. Citizenship alone is insufficient to demonstrate actual residence or tax residence in a tax jurisdiction. Consequently, the possibility is remote that Dominican dual citizenship enables circumvention of the CRS, by virtue of that dual citizenship being obtained through the CBI program. It is no more enabling than dual citizenship obtained in any other manner.
7. The interest of nations to minimise the circumvention of the CRS by the use of second citizenship is not material enough to justify the elimination or reduction of, or interference with, a legitimate path to second citizenship allowing for persons to obtain greater freedom, mobility, and security.

IV. Tax Residence in Dominica

1. **Dominican citizens may reside in Dominica, but do not automatically become Dominican tax residents.**
2. To become Dominican tax residents, economic citizens must either be physically present in Dominica for a period of 183 days in the tax year, be physically present for less than 183 days in the tax year but be deemed residents (by virtue of the 183-day rule) in the tax year immediately preceding or following the tax year, or hold their permanent place of abode in Dominica and be physically present for some time in the tax year.
3. The exact provisions governing tax residence can be found in the *Income Tax Act*, Part 1, Section 2(1), wherein a person is considered a tax resident if:
 - (i) His permanent place of abode is in Dominica and [he or she] is physically present therein for some period of time in the basis period for that year of assessment, unless the Comptroller is satisfied that his [or her] absence throughout the whole of the basis period was for the purpose of education, medical treatment, the performance of duties on behalf of the Government or for any other purpose which, in the opinion of the Comptroller, is reasonable;
 - (ii) He is physically present in Dominica for not less than one hundred and eighty-three days in the basis period for that year of assessment; or
 - (iii) He is physically present in Dominica for some period of time in the basis period for that year of assessment and such period is continuous with a period of physical presence in the basis period for the immediately preceding or succeeding year of assessment of such duration as to qualify him for the status of a resident for such preceding or succeeding year under subparagraph (ii).
4. **Dominica does not automatically generate tax identification numbers or other similar forms of identification for its economic citizens.** Such numbers are only generated where there is a specific need to do so, such as may be the case if the economic citizen pays tax in Dominica.
5. We must reiterate that tax residency has a physical presence requirements of 183 days. Tax residency is not automatic.

V. Residential Address

1. Under the CRS, a Financial Institution may be required to obtain documentary evidence confirming a person's residence in a jurisdiction. Illicit actors could seek to obtain documents normally constituting acceptable evidence of residence, despite not actually residing in a particular jurisdiction. The most common form of acceptable evidence of residence is utility bills.
2. One arm of the Dominica Citizenship by Investment Programme allows applicants to purchase Government-approved real estate to obtain citizenship. **To date, all Government-approved**

real estate in Dominica consists of hotels and resorts, with applicants being able to purchase shares of said hotels and resorts, or, in limited cases, freehold suites or apartments. Even where freehold suites or apartments are available for purchase, these are managed by the larger resort and not made available for residential living. Applicants are therefore not issued utility bills in their names.

VI. **Due Diligence Checks**

1. The Commonwealth of Dominica performs heightened due diligence on all applicants under its Citizenship by Investment Programme. In so doing, it discourages illicit actors from applying under the Programme, and otherwise prevents them from obtaining economic citizenship. We have attached for your information details of the process which is followed by two of the due diligence firms which undertake due diligence assessments of applicants to the Dominica Citizenship By Investment Programme.
2. At the heart of Dominica's heightened due diligence protocol are its robust data collection measures, and the internal and external processes adopted to ensure transparency and effective verification of data.

Robust Data Collection Measures

3. Applicants under the Programme must provide personal information and documents to support that information.
4. Personal information spans not just applicants' basic details, but their residential history, educational history, professional history, business history, and family history. Applicants must also provide extensive information on their source of wealth, including their estimated net worth, their net annual income, the value of their assets and liabilities, their close business relations, the main geographic location for their business activities, and, importantly, a summary of the means by which their total net worth was accumulated. Additionally, applicants must submit their personal bank account details.
5. Information is collected for applicants' present and past activities, with the latter generally spanning a period of 10 years.
6. Among the information requested, applicants must make declarations regarding tax. Specifically, they must answer: "Have you ever been under investigation by any law enforcement agency or tax authority in any country?" Anyone answering in the positive is immediately excluded from the Citizenship by Investment Programme.
7. The reason behind such extensive data collection is that the Commonwealth of Dominica seeks to fully understand the background of its applicants. Moreover, collected data is not taken as true. Rather, it must be corroborated, first by the applicant (by the submission of supporting documentation), and then by the Commonwealth of Dominica itself.

8. All supporting documentation must validate statements made by the applicant. So, where an applicant states he or she is employed, he or she must provide a letter of employment. Similarly, to confirm net worth, the applicant must provide at least 12 months bank statements. All supporting documents must be originals, or certified and legalised copies. Where documents are not in English, translations must be provided by certified translators, certified, and legalised.

i. Internal and External Processes: An Independent Ring-Fenced Unit and Supported by Professional Firms

9. The Commonwealth of Dominica has adopted internal and external processes to ensure transparency and effective verification of all information and documents provided by the applicant.
10. Internally, the Commonwealth of Dominica instituted the Citizenship by Investment Unit, a Government office existing within the Ministry of Finance, but acting independently of all other Government institutions. Established by Regulation 3 of the *Commonwealth of Dominica Citizenship by Investment Regulations, 2013* to “process all applications for citizenship by investment,” the Unit was then also tasked with “administer[ing] the Citizenship by Investment Programme” by the later *Commonwealth of Dominica Citizenship by Investment Regulations, 2014*.
11. Regulation 4(10) of the *Commonwealth of Dominica Citizenship by Investment Regulations, 2014* requires the Unit to examine every submitted application and every due diligence report it receives. Regulation 4(12) then requires the Unit to commission “all background due diligence checks” and to “mandate one or more independent professional firms to conduct these checks according to requirements set by the Unit.”
12. Verification of information and documents is thus performed both internally by the Unit and externally by one or more autonomous and impartial professional firms. A specific, minimum due diligence fee of US\$7,500 is charged for the main applicant, while a US\$4,000 fee is charged for each dependent applicant above the age of sixteen.
13. Verification always takes the form of enhanced due diligence. Within the Unit, applications are vetted by personnel trained in anti-money laundering and anti-terrorism. Unit personnel is also expected to remain abreast of all best practices in applicant due diligence and monitoring. Outside the Unit, investigations are carried out by reputable professional firms headquartered in Canada, the United Kingdom, and the United States. Such investigations include both online and in-depth, on-the-ground research on the applicant, as every piece of information on the applicant’s life is assessed. Separately, the Unit passes relevant information to international law enforcement and non-governmental organisations, such as Interpol and the Caribbean Community’s Implementation Agency for Crime and Security (IMPACS). Names are verified by these organisations against sanction and other relevant lists.
14. Although there is no mandatory interview as part of the citizenship by investment process, if the Unit considers it necessary, an applicant may be required to attend an interview before a committee, generally to be held in Dominica.

15. Regulation 4(8) of the *Commonwealth of Dominica Citizenship by Investment Regulations, 2014* states that applications for citizenship by investment may be declined where an applicant makes a “false statement or omits information requested on any of the forms.” Regulation 5 mandates the denial of citizenship to any applicant who “(a) has provided information which is false in any material respect on his or her application form, (b) has a criminal record other than in respect to a minor offence, (c) is the subject of a criminal investigation of which he was aware or ought to have been aware, (d) is a potential security risk to Dominica or to any other country, or (e) is or has been involved in any activity likely to bring disrepute to Dominica.” Exceptions apply for minor offences and investigations into minor offences.
16. Significantly, and in line with Dominica’s commitment to continue to monitor its economic citizens, the *Commonwealth of Dominica Citizenship by Investment Regulations, 2014* also provide authority to deprive applicants of citizenship where they are “subsequently found to have provided false or incorrect information, or concealed any material fact.” A clear example of this would be the concealment of criminal charges arising from tax evasion.
17. The Commonwealth of Dominica has created a framework for the performance of enhanced due diligence on all its applicants, the rejection of any applicant who fails to pass due diligence, and the deprivation of citizenship for any economic citizen who is later found to have, despite intense scrutiny, materially misled the Commonwealth of Dominica.
18. The Commonwealth of Dominica’s enhanced due diligence has garnered the approval of the citizenship by investment industry, as can be noted, for example, in the *CBI Index*, published in 2017 by the Financial Times’ Professional Wealth Management magazine. Other nations have instead suffered from criticism for their applicant investigation procedures, and it is the Commonwealth of Dominica’s recommendation that all nations intensify their procedures to ensure citizenship and residence by investment is only made available to outstanding members of society.

VII. Monitoring Stakeholders

1. The Commonwealth of Dominica runs one of the world’s most popular citizenship by investment programmes, advertised, at times, by stakeholders outside of its jurisdictional reach.
2. To ensure that the Citizenship by Investment Programme is promoted in a single, united voice, and that stakeholders do not stray from this voice, the Commonwealth of Dominica has instituted the measures discussed below.
3. No application may be submitted unless it is submitted by an Authorised Agent. To become an Authorised Agent, a person or legal entity must register with the Unit and obtain a licence, in a process that involves the vetting of the prospective agent and the signing, by the prospective agent, of a written contract where the prospective agent agrees to adhere to the terms and conditions of the Programme.

4. The role of Authorised Agent comes with unique duties and responsibilities. By regulation, an Authorised Agent must register all persons or entities who act, or are to act, as promoters on behalf of, in conjunction with, or in relation to, the Authorised Agent. The Authorised Agent must “take reasonable steps to satisfy himself as to the identity and bona fides of each promoter with whom the [Authorised Agent] enters into agreement, engages, or acts in conjunction with.” Furthermore, the Authorised Agent is “deemed responsible for all promotion, advertisement, or publication in relation to citizenship by investment published or disseminated publicly by any sub-agent, promoter, media outlet, entity, or person on behalf of or in conjunction with the [Authorised Agent].”
5. All Authorised Agents must renew their licence on an annual basis. Prior to being granted a new licence, all Authorised Agents must be “reviewed by the Unit as to performance and suitability for continued involvement with the Programme.” Authorised Agents who fail to pass the review
6. Wider provisions apply to anyone who disseminates information not in line with guidance issued by the Unit or by the Minister for Citizenship. For such persons or entities, the regulations provide for a fine on summary conviction, the suspension of any approved project which the person or entity may have proposed, and, in the case of Authorised Agents, loss of his or her authorisation to act as a registered agent.

VIII. A Profile for the Economic Citizen

1. Applicants for citizenship by investment are driven by a desire to improve their lives and those of their families. In Dominica, citizenship by investment can be obtained for main applicants, their spouse, and, subject to certain conditions, their children, parents, and grandparents.
2. The archetypal applicant for economic citizenship of Dominica strives for the freedom to travel across borders, greater flexibility to pursue business goals, and personal security. This is something that only the permanence and stability of citizenship, and a passport, can provide, and not something that residence alone can provide. That these are applicants’ primary goals is evidenced by the fact that a significant majority of those who apply under the Citizenship by Investment Programme do not choose to reside in Dominica, despite being legally entitled to do so.
3. A typical residence by investment applicant, on the other hand, chooses to invest in a particular jurisdiction because of the benefits that residence of that jurisdiction may provide. This can include tax residence, or the ability to claim tax residence, of that jurisdiction.

IX. International Tax Commitment

1. The Government of Dominica has given its full commitment to addressing the tax matters that have been identified through the OECD peer review process as well as those identified by the EU Code of Conduct Group as being harmful tax practices. The Government has given the 31st December 2018 as the deadline by which commitments will be achieved.

We trust that the foregoing is adequate/useful for your discussions. Government remains available to meet with your organisation on these matters.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'R Edwards', written in a cursive style.

ROSAMUND EDWARDS
FINANCIAL SECRETARY

For the attn. of the

**International Co-operation and Tax
Administration Division,**

OECD/CTPA

Sent via e-mail: crs.consultation@oecd.org

19 March 2018

Dear Madam, dear Sir,

Consultation Document – Preventing Abuse of Residence by Investment Schemes to circumvent the CRS

EFAMA¹ is grateful for the opportunity to comment on the OECD Consultation Document related to “Preventing Abuse of Residence by Investment Schemes to circumvent the CRS”, published on 19 February 2018.

EFAMA strongly supports the Standard for Automatic Exchange of Financial Information in Tax Matters (Common Reporting Standard or CRS). We strongly support the broader, underlying aim of the consultation document – to maintain official and public confidence in the robustness of CRS reporting.

In order to maintain the integrity of the CRS regime, we recognize that it is vital to be able to detect and deter avoidance schemes that are used to artificially circumvent CRS. It is, however, imperative that any rules introduced to identify and report avoidance schemes are certain, clear and targeted so that those financial institutions and others who are tasked with enforcing them can be certain that they are compliant.

Where a widely held investment fund is regarded as a Reporting Financial Institution, it is generally entirely reliant on the account holder self-declaration in terms of the tax residence information it receives. In general, such funds are mass market products and the operators do not have reason to

¹ EFAMA is the representative association for the European investment management industry. EFAMA represents through its 28 member associations and 62 corporate members close to EUR 23 trillion in assets under management of which EUR 15.6 trillion managed by more than 60,000 investment funds at end 2017. Just over 32,000 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining 28,100 funds composed of AIFs (Alternative Investment Funds). Please visit www.efama.org for further information.

Consultation Document – Preventing Abuse of Residence by Investment Schemes to circumvent the CRS

know whether the information received is accurate/comprehensive or not. Financial Institutions would obviously be expected and required under CRS to apply reasonableness checks if the KYC and tax residence information were inconsistent. However, if there were no reasons to suspect another tax residence had been omitted, or that the tax residence supplied has been ‘acquired’ by way of a RBI or CBI schemes and doesn’t really reflect true substance, then widely held investment funds should not be held at fault if their reporting follows the disclosures received and taken as reasonable in conjunction with KYC. The fund manager should not be challenged subsequently if another tax residence is found to be reportable, but has not been disclosed because of an account holder’s dishonest decision to withhold it.

The risks described in this consultation document fundamentally arise because of governments issuing genuine documentation that could be used to disguise tax residence. Whilst reasonableness checks should identify many issues in this area not all abuses of CRS by persons using genuine government documentation will be prevented. EFAMA would support steps that restrict the issue of genuine government documentation that could assist persons misrepresent their true tax residence.

As in practice, residence by investment opportunities are only available to wealthy individuals. The types of accounts that will be impacted are high value accounts held by individuals. These accounts are already subject to more stringent checks under the current CRS rules, including the relationship manager check.

In section 3 (*“Importance of correctly applying existing CRS due diligence procedures”*) the consultation document is suggesting a requirement to instruct Account Holders to include all jurisdictions of tax residence in their self-certification to avoid the circumvention of the CRS. EFAMA would like to confirm that this is a fair suggestion which can be implemented easily.

The standard account opening forms have more than one space for tax residence(s) so arguably the account holder is already prompted to consider this. In addition, the wording of the CRS self-certification attestation could be amended to include a specific statement repeating that “all countries of tax residence have been disclosed” as a reminder to account holders. Amended model CRS self-certifications could be placed on the OECD website.

Below is an outline of how the form would be amended – with the additional sentence highlighted in italics. This change would only be prospective and it would not be necessary to obtain new forms for existing account holders:

Consultation Document – Preventing Abuse of Residence by Investment Schemes to circumvent the CRS

"I declare that all statements made in this declaration are, to the best of my knowledge and belief, correct and complete. *I confirm I have declared all countries and jurisdictions of which I am tax resident.*

I undertake to advise ***[the Financial Institution/insert FI's name]*** within ***[XX]*** days of any change in circumstances which affects the tax residency status of the individual identified in Part 1 of this form or causes the information contained herein to become incorrect or incomplete, and to provide ***[the Financial Institution that maintains the account/FI's name]*** with a suitably updated self-certification and Declaration within ***[up to XX]*** days of such change in circumstances.

Signature: * _____

Print name: * _____

Date: * _____ "

If the Financial Institution reminds the account holder in the onboarding documentation of the requirement to include all jurisdictions, that should be agreed to be a 'reasonable step' and Financial Institutions should not be treated as having a responsibility to do further checks beyond reviewing the information provided in the application.

EFAMA would welcome some clarifying guidance on the above.

EFAMA would not recommend any changes to the CRS rules at this point in time. OECD peer reviews will be able to test if the CRS enforcement regimes in CRS participating jurisdictions are sufficiently robust to identify and deal with the threat posed to the integrity of the CRS regime outlined in the consultation document at hand.

We are grateful in advance for your attention to the concerns expressed in this letter and we welcome the opportunity to discuss these with you. In case there is any additional information that we can provide, please contact EFAMA at info@efama.org or [+32 \(0\) 2513 3969](tel:+3225133969).

Kind regards,

Peter De Proft
Director General

Submitted by e-mail: CRS.Consultation@oecd.org

March 14, 2018

FBF/RESPONSE TO PUBLIC DISCUSSION DRAFT: PREVENTING ABUSE OF RESIDENCY BY INVESTMENT SCHEMES TO CIRCUMVENT THE CRS

Dear Sir,

The FBF, as the voice of the French banking sector representing the interests of over 400 banks operating in France, encompassing large and small, wholesale and retail, local and cross-border financial institutions, is pleased to provide comments on the public discussion draft regarding the prevention of abuse of residence by investment schemes to circumvent the CRS for the consultative process underway and call for a continued interaction with the private sector so that the voice of business is duly taken into account.

As preliminary remark, please note that the French financial institutions (FIs) have always strongly supported the Standard for Automatic Exchange of Financial Account Information in Tax Matters (Common Reporting Standard or CRS) and have been intensely involved in its implementation since the beginning.

We understand that the purpose of the contemplated rule is to prevent the abuse of “*residence by investment*” (RBI) and “*citizenship by investment*” (CBI) schemes. To this end, it is envisaged to implement new compliance and policy related measures taking into account the possible role of, notably, FIs subject to CRS reporting.

The French banking industry wishes to underline that, the issue identified is primarily a matter to be addressed between the OECD and the concerned States by these “passports of convenience” and not a subject between institutions and their customers.

The targeted schemes - RBI (residence by investment) or CBI (citizenship by investment) - do not allow to circumvent the CRS since:

- They issue a citizenship or a residence (non-tax), whereas the CRS aims at tax residence,
- They issue tax residence: the CRS is meant for non-resident to declare all their tax residences.

CRS circumvention is only possible if the individual intentionally declares to the bank incorrectly (by failing to declare his original tax residence) in the country other than that in which he has benefited from RBI or CBI - its situation with regard to CRS (in particular, for new accounts, in its self-certification).

Although French FIs are fully committed to implement CRS in an effective way and in compliance with its objectives, their role must be limited to the effective exchange of information and not challenging the tax residency delivered by a specific country which comes under its sole sovereignty.

Placing excessive and undue burden on FIs would be counterproductive and should inevitably weaken the process of exchange of financial information.

French banking industry is of the view that the prevention of CBI/RBI abuse' schemes should, more efficiently, be implemented through an approach focusing on jurisdictions offering these kind of schemes rather than shifting the onus on FIs which clearly act as major players in the CRS field.

Best regards,

16 March 2018

International Co-operation and Tax Administration Division, OECD/CTPA
Via e-mail: CRS.Consultation@oecd.org

**Re: Preventing Abuse of Residence By Investment Schemes to Circumvent the CRS –
consultation**

To whom it may concern,

Thank you for the opportunity to provide input to the consultation regarding “Preventing Abuse of Residence By Investment Schemes to Circumvent the CRS”.

The Financial Transparency Coalition is a global civil society network¹. We work to curtail illicit financial flows through the promotion of a transparent, accountable, and sustainable financial system that works for everyone.

Please find below our main recommendations with regard to this consultation. Section A contains recommendations specifically related to tackling CRS avoidance schemes through residency and citizenship-by-investment schemes. Section B contains recommendations related to the due diligence processes and overall transparency and accountability mechanisms put in place by countries offering these schemes.

A. Recommendations related to tackling CRS avoidance schemes

The recommendations in this section are drawn from a recent Tax Justice Network report, which includes a list of jurisdictions considered risky for offering residency and citizenship by investment schemes, classified by their level of risk (see Annex I here: https://www.taxjustice.net/wp-content/uploads/2018/03/20180305_Citizenship-and-Residency-by-Investment-FINAL.pdf)

¹ The members of the FTC coordinating committee are Centre for Budget and Governance Accountability, Christian Aid, Eurodad, Fundacion SES, Global Financial Integrity, Global Witness, Latindadd, PALU, Tax Justice Network – Africa, Tax Justice Network, and Transparency International.

Measures to be taken by countries receiving information about residents for whom they have no tax returns and who appear to not be subject to tax in their jurisdiction

- Share information spontaneously about relevant residents with the country or countries in which authorities suspect the individual may actually be resident
- Report to the OECD Secretariat on all the account holders who appear not to be relevant for tax purposes in their jurisdiction.
- Publish statistics on the total number of accounts and the total account balance of account holders who appear not to be relevant for tax purposes in that jurisdiction, e.g. because they do not have to file tax returns in that jurisdiction.

Measures to be taken by all countries, based on other schemes to avoid CRS reporting

- Publish statistics² on an annual basis on the total number of accounts held by local residents, at least since the year 2013.
- Consider all persons with a power of attorney or any right to manage the account (e.g. right to withdraw money or make transfers) as an account holder for CRS purposes, and report their banking information to their country of residence, especially if the account holder is resident in a non-participating jurisdiction

Due diligence by financial institutions

Whenever it is determined - either through self-certification or through the financial institutions' own indicia search (pursuant to the CRS due diligence) - that an account holder or controlling person is resident in a risky jurisdiction (for example, one of the jurisdictions listed by the Tax Justice Network report ~~above in point A~~³ - including anyone who would be considered a local resident⁴), then all countries should require the financial institutions located in their territories to engage in enhanced due diligence including:

² See a broader explanation of CRS statistics here (page 37): http://www.taxjustice.net/wp-content/uploads/2013/04/TJN_AIE_ToR_Mar-1-2017.pdf; 3.6.2018.

³ https://www.taxjustice.net/wp-content/uploads/2018/03/20180305_Citizenship-and-Residency-by-Investment-FINAL.pdf

⁴ For example, if St. Kitts offers residency for investment schemes, a bank in St. Kitts would also have to apply the enhanced due diligence to people who are local residents, meaning anyone holding a St. Kitts residency certificate or passport. There could be exceptions, for example if their birth certificate shows that the person was born in St. Kitts

- Requiring information regarding all previous residencies and citizenships;
- Requiring a copy of the birth certificate (to see if the declared residency/citizenship matches that of the place of birth), and citizenship of parents;
- Requiring proof of stay in the country of the declared residency, e.g. passport stamps showing presence in the country, attendance by children to a local school, etc.
- Marking the account holder as a high-risk person.

B. General recommendations for countries offering residency and citizenship-by-investment schemes

Due Diligence to be carried out as part of the residence or citizenship-by-investment application process

All applicants for residence and citizenship-by-investment schemes should be subject to comprehensive due diligence checks. These checks should be extended to all dependents of the applicants over the age of 12.

In particular, the following must be applied:

- There should be no time restrictions on how long the due diligence process should take.
 - Checks must be conducted in local languages and in all jurisdictions the applicant has resided for a period of more than six months. In case the applicant holds more than one citizenship, checks must be conducted in all jurisdictions.
 - Information provided by the applicant must be independently verified.
 - Suspicious applications must be reported in due time to the Financial Intelligence Unit (or relevant competent authority) and relevant law enforcement authorities.
 - Authorities should publish names of successful applicants and consider without any deadline any report from the public that indicates false statements provided by and concerning the applicant or family members.

The following checks must be adopted as standard:

-Sanctions lists checks. The applicant's names should be checked against comprehensive sanctions and terrorists list, lists of politically exposed people, as well as regulatory and law enforcement advisories globally.

-Individual business interest checks in all jurisdictions that the applicant has had significant presence or business presence. Checks of any firms that the subject may be currently or formerly associated as a director, shareholder or any other substantial capacity.

- **Asset searches in all jurisdictions that the applicant has resided or had significant presence or business presence.** Checks of available real estate and/or motor vehicle/vessel registrations to identify any assets that may be owned.
- **Full English and local language media and internet searches.** Searches should be conducted using naming combinations that allow for coverage of all and any spelling, transliteration and naming variation of the subjects' names.

-Education and employment verification. Checks of public domain and contacts with institutions listed by the applicant to confirm employment and education records.

-Source of funds verification. The applicant should be required to provide evidence on the sources of funds invested as part of the scheme. Checks should be conducted to ensure the applicant's wealth is not disproportionate to their known lawful sources of income.

-Court records verification. Checks of applicable civil and criminal court records, including for pending charges related to crimes of corruption, money laundering and tax evasion, among others.

-Criminal record verification. Applicants should provide a clean criminal record certificate issues by the competent authority of the State of residence and of origin of the applicant.

-Bankruptcy/insolvency. Checks of applicable court records or records of other authorities that deal with insolvency.

-Regulatory checks. Checks against local regulatory bodies' blacklists.

-Undeclared second nationality checks

-Business intelligence research. Interviews with well-placed individuals to check for political connections/exposure; source of wealth and professional experience; links to organized crime; suggestions of involvement in money laundering, corruption and other illegal activities; dealings with sanctioned entities or states, and social and environmental responsibility.

National governments should maintain primary responsibility for conducting due diligence as well as accepting or rejecting applicants. However, if due diligence is outsourced to a third party,

a proven track record in due diligence must be required, as well as an enhanced level of due diligence on the third party provider.

Moreover, to prevent conflicts of interest, agencies responsible for conducting due diligence should not have a commercial or corporate stake in the programme, such as offering services, advice or promoting the programme. They should also not have suppliers or advisors of such programmes among their clients, and should not be remunerated against the number of successful applications processed.

It is critical that governments ensure that they fully understand how the sources and research techniques applied by the provider adhere to the principles on best-practice methodology outlined above. In addition, it is important that only one government department is responsible for receiving and assessing enhanced due diligence (EDD) reports, and that their staff have sufficient training and resources to scrutinize the reports. Should a government department receive a due diligence report that identifies risk, it must be discussed with the relevant agency to ensure that the government has a comprehensive picture of the type and level of risk posed. There must be a clear policy in place which ensures that agencies must disclose any suspicious information uncovered by EDD checks to the relevant government department and law enforcement agency.

Transparency and accountability of citizenship and residency schemes

- Information, in at least annual breakdown, regarding the number of applications received (by country of origin), granted, refused and the agents involved in the process should be publicly available in open data format.

- A list of all individuals and their dependants granted citizenship under the programme, including information on their country of origin and multiple citizenships, should be published in the official gazette and made available online in open data format.

- Authorities should monitor successful applicants to ensure they fulfil the requirements of the programme (e.g. maintaining residence in the country, reputable conduct) after citizenship is granted. Statistics related to checks conducted by authorities and cases of deprivation of citizenship should be published online in open data format.

-Adequate notes and documents relating to decisions must be kept on file by the relevant government department.

-Properties purchased as part of the programme should be registered in the name of the applicant. Properties owned through domestic or offshore companies should not qualify.

-Any investment made as part of the programme should be transferred from the applicant's personal bank account

-Information on the funds received through the citizenship or residency programme and the amounts allocated to relevant ministries, development, environmental or social funds, the programme concessionaire or operator and other agents involved in the application process should be made available online.

-Information on how funds allocated to environmental, social or development funds are used should be publicly available.

- Both the funds and the operation of the scheme as a whole must be subject to regular audits. Audit findings and recommendations should be published.

-Whistleblowing protection mechanisms and safe reporting channels should be in place for government staff and citizens to report concerns.

We are happy to provide further detail and background to these recommendations. Please feel free to contact Andres Knobel of the Tax Justice Network at andres@taxjustice.net or Sargon Nissan, Director, Financial Transparency Coalition, at snissan@financialtransparency.org.



Sargon Nissan
Director
Financial Transparency Coalition

International Co-operation and Tax Administration Division, OECD/CTPA
Organization of Economic Development and Cooperation (OECD)
Paris, France

March 16, 2018

SUBJECT:

Submission regarding OECD consultation document on misuse of CBI/RBI schemes to circumvent the Common Reporting Standard

Dear Sirs,

The Global Investor Immigration Council is a non-partisan, not-for-profit organization addressing the opportunities and challenges of the movement of immigrant investors and global citizens. The GIIC works to protect the reputation of the investor immigration industry and serve as solid ground for the development and maintenance of best industry practices. It is a self-regulatory organization and recognized global representative and proponent of the industry.

The GIIC's members work with many of the countries that offer citizenship by investment and residency by investment programs. We also work with individual clients, where we conduct background checks and due diligence on all of our clients. We do this to protect our business reputation, that of our industry, as well as to protect the countries that we work with. Under no circumstances would we consider tax evasion to be legitimate grounds to seek another country's citizenship. Rather, our clients are motivated by a desire to facilitate their international travel as well as securing a safe future for generations to come.

With respect to the countries with whom we work, we must inform you that conducting thorough background checks is an integral part of the CBI/RBI application process. Using their own resources as well as those of many private, internationally known companies that specialize in this work, these countries conduct the best possible background checks. Thorough due diligence on their part is also essential to protect their investor programs both domestically and internationally. The health of the CIP industry, in our view, is directly linked to the industry's embrace of transparency, and participation in and defense of the global security apparatus including the international financial system. As such, the GIIC would like to take this opportunity to comment on the OECD consultation document on preventing abuse of CBI/RBI schemes to circumvent CRS.

We acknowledge that, as the consultation document claims, there are individuals who may seek to evade CRS rules through CBI/RBIs. As a Council, we firmly believe that it is our duty to be aware of these possibilities and to be supportive of measures to be taken to mitigate stakeholders in our industry from participating in schemes to avoid CRS. We fully support the OECD efforts to ensure that these programs are not misused to avoid proper tax assessment and payment. We are therefore fully supportive of mandatory disclosure rules requiring all industry participants to report arrangements that appear likely to circumvent CRS reporting requirements.

Having said the above, we would like to respond to all paragraphs in the consultation document on misuse of CBI/RBI schemes to circumvent the Common Reporting Standard ("Consultation Document") in point form as it is written. The following is our response:

1. We agree, more jurisdictions are offering both citizenship and residence by investment programs.
2. We certainly agree that individuals seek out these programs for legitimate reasons such as freedom of mobility.
3. We do not agree that such programs offer a back door to money launderers or tax evaders in their attempts to avoid CRS rules. The fact that these programs offer an immigration route to countries based on a financial investment does not create more of a likelihood that CRS rules can be avoided. It does not matter if a person immigrates to a country through marriage, or even as a refugee, citizenship by investment program (CBI), or residence by investment (RBI), all immigrants have access to the same type of documentation that any other immigrant has. In other words, and as an example, it does not matter if a foreign person is on a tourist visa in Canada or an immigrant investor status, or is a refugee in Canada, the process of renting a property or receiving a driver's license is always the same. The route one takes to receive citizenship or residence in a country simply does not make it easier to receive documents that could be used to evade CRS rules.
4. We accept and welcome the fact that OECD is looking into this matter as part of its CRS loophole strategy. We would also like to add our confirmation to the idea that all stakeholders should be reminded to correctly apply relevant CRS due diligence procedures.
5. We appreciate the opportunity to provide our input into the subject matter of the Consultation Document.
6. We absolutely agree that CBI/RBI schemes do not offer a solution for escaping the legal scope of reporting pursuant to the CRS. These programs provide citizenship or a right of residence, they do not claim to nor do they create a right of tax residence. Clearly, every jurisdiction has its own separate legislation that creates the right of tax residence and such residence is generally in no way

related to CBI/RBI. It is correctly noted in the Consultation Document that reporting on CRS is based on tax residency, not citizenship, or immigration status. It is correct that CRS requires tax payers to self-certify their tax residency in all relevant jurisdictions. However, it is also our understanding that financial institutions are required to know their client and not just accept self-certification without further due diligence on individual tax payers.

7. We do not believe that CBI/RBI can potentially be exploited to avoid CRS requirements any more so than almost any other immigration status. We accept that many tax payers can provide inaccurate or incomplete information to financial institutes but the type of immigration status in another country does not in any way make it potentially easier to provide such inaccurate or incomplete information.

8. Certainly, example 1 in no way relates to CBI/RBI. As mentioned above, receiving citizenship or residency does not automatically cause one to become a tax resident. As such CBI programs allow applicants to receive passports but certainly do not automatically award them any type of tax residency certificate. An investor in a CBI/RBI program would not be able to falsely self-certify tax residency as he would not be able to provide a tax residency certificate from the country that provided him with his new citizenship or residence.

9. This example is also irrelevant to CBI/RBI programs. While in some jurisdictions the purchase of a property provides residency status for immigration purposes, it certainly does not provide tax residency, no matter how high or low the cost of such real estate may be. Furthermore, many countries, such as the UK have what is considered non-domiciled tax regimes. Israel is another example where new immigrants are not required to report or pay tax on any foreign earned income for a ten year period. Yet none of these countries and their immigration programs are considered to be assisting taxpayers to avoid CRS requirements. However, again, such regimes do not in any way effect the tax residence of an individual in any other country, nor does it affect their reporting obligations or tax payments in any other jurisdiction where they are also tax residents or where they generate income. Once more, the path with which a taxpayer receives residence or citizenship and so called non-domicile status, certainly does not affect their tax status in any other jurisdiction. Neither do the tax regimes of the individual countries that offer any type of immigration program including CBI/RBI

10. This example again does not have any relevance to CBI/RBI programs. CBI/RBI programs do not offer tax residency certificates and as such when an applicant self certifies their tax residence, and provide a tax residency certificate, they are not actually avoiding CRS requirements. The taxpayer would only be able to acquire a tax residency certificate if the tax payer fulfills the requirements of the jurisdiction to become a tax resident. Having acquired CBI/RBI or any other immigration status does not automatically allow the tax payer to omit certification of their tax residency in every country

where they are a tax resident. Receiving CBI/RBI in this example also does not increase the potential of avoidance of CRS requirements.

11. This example again does not relate to CBI/RBI programs. In this example, the outcome of the due diligence of the bank is such that it reports to perhaps the wrong jurisdiction. It is the opinion of this Council that financial institutions should institute adequate due diligence and KYC programs that correctly identify tax payer's jurisdiction of tax residence. As acknowledged, the path that a taxpayer takes to receive immigration status in any jurisdiction does not determine tax residency and as such is not related to CBI/RBI programs. Financial institutions should be made aware of this simple fact, as well as the rules and regulations of what does determine tax residency in various jurisdictions. Once such training and knowledge is available to financial institutions as a way to cross-check self-certifications, then CRS rules will be followed more accurately.

12. In this example, a passport is not and cannot be used as documentary proof of tax residency. As acknowledged, citizenship and passports do not determine tax residency. Financial institutions should be made aware of this fact and when doing their due diligence and KYC checks, should maintain the understanding that citizenship and taxation are not interrelated. As CBI/RBI programs do not lead to tax residency, only those who are truly tax residents in a jurisdiction can obtain a tax residency certificate. Tax residency in one jurisdiction does not mean that a taxpayer is not a tax resident of another jurisdiction, financial institutions should be made aware of this fact and in doing their due diligence and KYC checks on clients, should pay special attention to such matters.

13. This example, while in no way related to the issue of CBI/RBI, certainly outlines the correct CRS reporting mechanism.

14. Again, the purchase of a property for any price in any jurisdiction does not determine tax residence. Immigration status under CBI/RBI also does not determine tax residence. It is the recommendation of this council that financial institutions should be made aware of these issues and pay special attention to correct tax residency rules when performing due diligence and KYC checks.

15. Again, this example has nothing to do with CBI/RBI. The path that an individual taxpayer take in order to receive permanent residence in a jurisdiction does not influence the taxpayer's tax residence. As such, and as an example, a French citizen and tax resident of France, with a permanent resident permit in Canada who received his residence permit through a skilled worker program and has a residential address in Canada, can open an account at any financial institution and self-certify his tax residence in Canada. If the financial institution is not aware this immigration status does not determine tax residence, it will mistakenly cause for reporting to be made to Canada, instead of France. As such again it is the recommendation of this Council that financial institutions be trained to clearly understand that immigration status does not determine tax residence.

16. The Council would like to state that it does not agree with the premise that a physical residence test in CBI/RBI countries would decrease the risk of evading CRS rules. Again, citizenship and immigration status does not in any way effect one's tax residence status, so even if physical presence was required to become a citizen by investment, that physical presence test would result in acquiring citizenship not tax residence. Low or no tax jurisdictions, and jurisdictions which provide foreigners with a special tax regime to individuals who have received CBI/RBI are not more helpful to those taxpayers hoping to avoid CRS regulations. Tax payers who have immigrated to Canada through the immigrant investor or any other program are able to legally structure offshore assets in an "immigration trust" and shield their offshore income from Canadian taxation, however this ability does not change their tax residency nor help them in any way to avoid CRS rules. The same goes for tax payers who immigrate to the UK via the Tier 1 (investor) visa. These tax payers, can maintain non-domiciled status and be exempted from paying tax in the UK on foreign income. However, although they can shield their foreign income, the UK investor program certainly does not assist taxpayers avoid CRS rules.

- In respect to the proposal to automatically exchange information on who receives CBI/RBI with information regarding taxpayer's previous tax residence, this simply and practically is impossible. Obviously, there are also issues of privacy related to the exchange with all financial institutions within the OECD of taxpayers' immigration status in certain countries. Additionally, CBI/RBI does not change a taxpayer's tax residence status, therefore CBI/RBI countries do not generally collect such information on taxpayers.
- Indicating the immigration status of a tax payers on a tax residence certificate and whether they received that status because they were a refugee, or an investor would certainly be an invasion of privacy and this Council cannot support such action. Additionally we simply do not consider the path a taxpayer used to immigrate to be at all relevant to the issue of that taxpayer's tax residence status.

17. The Council agrees that all financial institutions can mitigate abuse of CRS rules by properly applying due diligence procedures to all taxpayers. We submit that if correct due diligence and KYC procedures are maintained by financial institutions then the fact that CBI/RBI programs exist would in no way even raise the issue of evading CRS rules as well as the concern show by the OECD regarding this matter.

18. The Council welcomes the OECD compiling a list of high risk schemes and hopes that the OECD will pay proper and correct attention to the minimal, if any, effect that CBI/RBI has in assisting tax payers evade correct CRS information exchange.

In defining high-risk CBI/RBI schemes, the OECD noted several factors that could lead to abuse. We would suggest one other to consider: CIPs, where one intermediary has an effective monopoly on the program and can abuse such programs, including creating new governmental documentation that could assist taxpayers to avoid CRS rules. Barriers to competition create a legal monopoly and competition, like transparency, is key to the health of any industry. This competition is necessary so as to avoid undue pressure on governments to succumb to individual interests, which can, again, lead to assisting taxpayers to evade CRS rules.

Another challenge for CIPs is standardization on compliance and the governance-related issues. A need for proper due diligence and compliance has been readily accepted in some regions which has led to consistency on the vetting of applicants. Unfortunately, these practices are not universal and in some programs the compliance and transparency are severely lacking. There is clearly a need for institutional support to compel standards. Such support can come from the European Union given that many countries in the region are offering CBI/RBI on the strength of visa free access.

The number of countries entering or considering entry into CBI/RBI programs has increased considerably in recent years and consequently there is now an even more demanding case to standardize compliance. In our view, standardization should include the following:

- A rigorous due diligence process that includes the use of both the public and private sectors.
- A due diligence process that includes the verification of documents submitted by applicants.
- Universal inclusion of biometrics in passports.
- A process that allows the sharing of information by countries that have met the global standards.
- A monitoring process to ensure countries are conforming with the industry standards.

With the above, the GIIC would like to make clear that CBI/RBI schemes cannot be used to circumvent CRS rules. It is the position of the GIIC that it is only through proper training, and proper due diligence and KYC procedures that financial institutions can guard against abuse of CRS rules. Financial institutions should understand the rules and how to apply them. Most of all, financial institutions should understand that immigration status does not provide tax residence status and therefore should be vigilant in applying this understanding when taxpayers self-certify tax residence in a jurisdiction by claiming residence status or citizenship in a certain jurisdiction.



Some of our ideas may be ahead of their time but one has only to look back to the Financial Action Task Force (FATF), in which the OECD played a pivotal role, to see how quickly progress can be made. Moreover, the demand for CBI/RBI is only going to increase with global migration trends resulting in still more countries looking to explore ways to fill the void. It is critical that the industry work closely with other stakeholders such as the OECD to ensure that it develops in a transparent and responsible manner.

Thank you for the opportunity to contribute to this submission.

Signed,

Mr. Mykolas Rambus, Chairman, GIIC

Mr. Armand Arton, Founding Member, GIIC and Founder, Arton Capital

Mr. Nuri Katz, Founding Member, GIIC and Founder, Apex Capital Partners

Kenneth (Kim) Marsh, CAMS, CFE, global compliance specialist with a focus on citizenship and residency programs

Ambassador Eric T. Schultz (retired), government affairs strategist



April 5, 2018

OECD/CTPA
International Co-operation
and Tax Administration Division

Dear Sir or Madam,

**RE: RESPONSE TO OECD CONSULTATION DOCUMENT- "PREVENTING
ABUSE OF RESIDENCE BY INVESTMENT SCHEMES TO CIRCUMVENT THE
CRS**

We have reviewed the subject consultation document and briefly comment in relation to Grenada as follows:

1. The Grenada Citizenship by Investment programme is regulated by the Grenada Citizenship by Investment Act, 2013 which came into force on the 2nd day of September 2013 and by the Grenada Citizenship by Investment Regulations, 2013.
2. The benefits associated with Grenada citizenship by Investment are numerous. Some of these are as follows:
 - i. Grenada allows individuals to hold dual citizenship, and citizenship may be extended to family members, such as a spouse, dependent children, and dependent parents. Children and young adults may obtain preferred access, and in some cases grants, to top schools and universities.
 - ii. Grenada offers its citizens social and political security, reinforced by its membership in the United Nations and the Commonwealth of Nations.
 - iii. Grenada has no foreign income, wealth, gift, inheritance, or capital gains tax. Grenada's currency, the East Caribbean dollar (XCD), is pegged to the United States dollar (USD).

- iv. Grenadian citizens can travel without visa restrictions to more than 115 international and Commonwealth countries.

The benefits attached to the Grenada CBI programme has no doubt legitimately attracted many well intended foreigners to the programme.

3. In reviewing the consultation paper, we understand that some CBI and RBI schemes may lend itself to a circumvention of the CRS.
4. In Grenada however, the Act which governs the Grenada CBI programme does not in any way make provisions for tax residency of citizens by Investment. No overt provision of local addresses is done through the programme, neither is TIN (tax payer identification numbers) automatically facilitated on attainment of CBI status. In fact, CBI Persons who wish to obtain TIN will not get same unless and until they are ordinarily resident in Grenada. The Income Tax Act cap 149 defines "resident in Grenada", in relation to a year of assessment as:

(i) (a) in the case of an individual, that—

(i) his or her permanent place of abode is in Grenada and that he or she is physically present therein for some period of time in that year of assessment, unless the Comptroller is satisfied that his or her absence throughout the whole of the year of assessment was for the purpose of education, medical treatment, performance of duties on behalf of the Government or for any other purpose which, in the opinion of the Comptroller, is reasonable,

(ii) he or she is physically present in Grenada for not less than one hundred and eighty-three days in that year of assessment, or

(iii) he or she is physically present in Grenada for some period of time in that year of assessment and such period is continuous with a period of physical presence in the immediately preceding or succeeding year of assessment of such duration as to qualify him or her for the status of a resident for such preceding or succeeding year under subparagraph (ii);

5. Unless the conditions as provided for in the Act and referred to above are met no TIN will be provided to someone simply because they have obtained Grenada CBI status.
6. Similarly, in Grenada, to obtain a voter's registration identification card, residency in Grenada is required. Section 7 of the Representation of the Peoples Act, Cap 286A provides:

A person shall be entitled to be registered as an elector in any one constituency if he—

- (a) is a citizen of Grenada; or*
- (b) is a Commonwealth citizen, who has resided in Grenada for a period of at least twelve months immediately before the date of his registration;*
- (c) has attained the age of eighteen years; and*
- (d) is ordinarily resident in that constituency.*

7. If it cannot be shown that a citizen by Investment is ordinarily resident in Grenada no voter's identification card will be issued to that citizen.
8. Grenada is also CRS compliant having enacted the Mutual Exchange of Information on Taxation Matters (Common Reporting Standard) Regulations, S.R.O 30 of 2017 and for the avoidance of doubt, Grenada is willing to eliminate from its programme any procedural mechanism that can lead directly to tax evasion or the undermining of CRS due diligence procedures. This is reflected in the way "residency" is dealt with in Grenadian legislation referred to above and the strict standards in law to which citizens by investment must measure up to before they can be seen as "resident" for tax purposes.
9. One of the biggest banes in citizenship by investment programmes as pointed out in examples 1 and 2 of the consultation document, is the risk that a citizen by investment may conceal his true tax residency status in one or more locales.
10. What may be of importance in this regard is the use of a, "not resident for tax purposes" certificate issued by a state to citizens by investment who are not tax resident in the locale of investment citizenship. This will assist in estopping such citizens from falsely stating to be so resident if they are not. The certificate can be issued yearly so that tax residency status for each year will be captured. The certificate can be reduced to a stamp that is endorsed unto a citizen by investment passport annually so that it can be brought quickly to the attention of the authorities in foreign jurisdictions needing to verify tax residency status. As part of this initiative, a special continuously updated registry of citizens by investment can be kept at local tax departments or other preferred department so that any territory needing information to verify the tax residency status of a citizen by investment will be able to source that information from the registry at the local tax office or other designated office. The tax status in the registry must always coincide with the information on the tax certificate. The certificate of "not resident for tax purposes" will be useful in the avoidance of fraudulent statements which may lead one to believe a citizen by investment is resident in a country for tax purposes when in fact he/she is

not. This, no doubt is important, since different jurisdictions may have different tests for determining tax residency. Where the Citizen by investment becomes resident for tax purposes, the endorsement will be changed to reflect this.

11. The process of self-certification under CRS, can assist with the issuance of a tax certificate of the kind referred to above. However, it must never be the sole determinant since persons cannot always be left to make full and frank disclosure of all that is relevant. Documentary evidence and other forms of enhanced due diligence are essential.
12. From the foregoing, it is clear that accurate information sharing between states is critical in the fight against the undermining of CRS due diligence procedures. Grenada is party to various tax information exchange agreements. This shows Grenada's dedication to solving issues related to tax compliance and reporting.

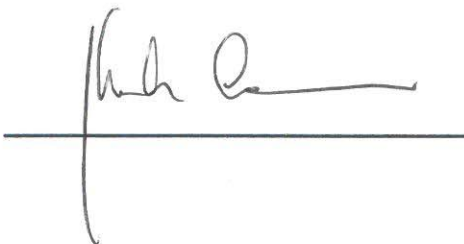
Conclusion

To address the concerns raised in the consultation paper, CBI/RBI schemes must be willing to adapt their programmes to ensure that perceived loopholes are addressed. A key feature in addressing perceived loopholes is adequate and accurate information sharing between territories worldwide.

Grenada's programme does not offer tax residency and in fact strictly applies the residency test in its dealings with all citizens inclusive of those by investment.

Grenada continues to remain committed to improving the integrity and good reputation of its programme and as such, continuously seeks to eliminate anything from it that may lend itself to the undermining of CRS due diligence procedures.

Yours faithfully,



Jersey, 19 March 2018

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OECD RBI/CBI Consultation Response

Dear Sir or Madam,

We welcome the opportunity to respond to the OECD's public consultation entitled "Preventing Abuse of Residence by Investment Schemes to Circumvent the CRS" (the Consultation).

We fully support the policy goals of the Common Reporting Standard (CRS) and welcome the recent publication of the "Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures" (MDR) and support the OECD's continued efforts to combat arrangements designed to circumvent the CRS.

We shall separate our response into two parts:

- (a) Evidence of Misuse of Citizenship-by-Investment (CBI) / Residence-by-Investment (RBI) schemes to circumvent the CRS; and
- (b) Recommendations to prevent such abuse.

Evidence of Misuse

As the global leader in residence and citizenship planning, advising hundreds of clients each year through over 30 offices worldwide on residence and citizenship by investment, we have commissioned an extensive internal review of the reasons why our clients are interested to pursue CBI/RBI programs.

The results of our internal review are set out below, which we are pleased to share with you:

Reasons for choosing RBI and CBI programs

Resident country of applicant	Relocation for better education of children	Relocation for better lifestyle, security and career opportunities	Relocation because of CRS and/or better tax environment	No relocation - visa free access to more countries is primary goal	No relocation - interesting real estate investment is primary goal	No relocation - having an additional residence or citizenship brings more security	No relocation - an additional residence or citizenship can help with regard to CRS and/or tax planning	Other reasons
North Asia	23%	14%	0%	12%	32%	15%	4%	0%
South East Asia	30%	3%	0%	19%	15%	9%	10%	15%
Middle East	21%	21%	3%	14%	7%	24%	2%	8%
Europe, Russia and CIS	23%	19%	10%	19%	12%	12%	3%	0%
Africa	5%	29%	0%	31%	7%	29%	0%	0%
North and South America	0%	31%	0%	39%	2%	27%	0%	0%
Global	17%	20%	2%	22%	12%	19%	3%	4%

The evidence from our review therefore supports legitimate use of RBI/CBI programs to permit greater visa-free travel (22%), career opportunities (20%) and security (19%).

We therefore do not have meaningful evidence of systemic or widespread abuse of RBI/CBI schemes for the purposes of circumventing the CRS. On the contrary, the internal review would indicate that, at least for our clients, there is no such abuse.

Recommendations to Prevent Abuse

As the OECD states itself in the Consultation, CBI/RBI schemes do not of themselves offer a solution to escape reporting under the CRS. The CRS is based on the tax residence status of an individual, in most cases CBI/RBI schemes simply confer citizenship or rights to reside in a jurisdiction and not tax residence status (point 6, Consultation). Particularly CBI schemes have generally no impact on the tax residence status of individuals, while RBI schemes may lead to a change in tax residence if indeed the individual taxpayer does move his or her centre of interests to the new country of choice.

However, we recognize that there may be some advisors that seek to market RBI/CBI schemes with the intention of misleading clients as to their CRS outcomes, or worse, actively assist clients to engage in activities highlighted by Example 1 and Example 2 (points 8-15) of the Consultation.

However, we have, with the assistance of specialized professional advisors, considered the scope of the recently published MDRs. In this regard we note that such activity will in the future amount to a CRS Avoidance Arrangement within the terms of Rule 1.1(e) to the MDRs, and that such promoters will be obliged to disclose details of their activities to their local tax authorities. We are confident that the risk of filing a mandatory disclosure, particularly as a “Promoter”, will effectively deter such behaviour in the future.

CRS Due Diligence Weaknesses

Correct application of the CRS due diligence procedures may help to prevent CBI/RBI schemes from being used to circumvent the CRS. However, with due respect, we do not agree that abuse can “to a large extent” (point 17, Consultation) be prevented by application of the current CRS due diligence procedures.

We suggest below a number of amendments to the current procedures, which we are confident will materially support and strengthen the integrity of the CRS and provide a more credible deterrent to individuals seeking to use RBI/CBI schemes to exploit the current weaknesses.

Use of TINs, Documentary Evidence

Sections III, IV and VII of the CRS sets out the procedures to be followed by Reporting Financial Institutions to identify Reportable Accounts held by individuals. Separate rules apply to existing (high and low value) and new accounts.

In the case of a new account, the account holder is required to provide a self-certificate, whilst in practice a self-certificate has also been required in the case of existing accounts with some foreign indicia, as permitted by Section III B.4, C.5(b).

A self-certificate requires a TIN and Documentary Evidence. The current CRS due diligence procedures require account holders to self-declare their tax residence, with supporting Documentary Evidence which may simply include a valid government issued ID card or certificate of residence, which need not be a certificate of tax residence. Some jurisdictions may not issue a TIN, others may issue a TIN without the requirement of tax residence.

Although current CRS due diligence procedures require Financial Institutions to reject a self-certificate or Documentary Evidence if the Financial Institution knows or has reason to know (objective standard of a reasonably prudent person) the self-certificate or Documentary Evidence is incorrect or unreliable, Example 1 (pg. 3) in the Consultation demonstrates that the current procedures may be insufficient to effectively counter a case where an account holder uses recently acquired Documentary Evidence to mislead a Financial Institution to under-report the account.

We suggest amendment to the current due diligence procedures to introduce a risk based approach to the process of verifying tax residence status. Where an account holder seeks to rely on recently issued Documentary Evidence then a Financial Institution ought to treat the account as high risk and require supporting evidence of previous tax residence status, perhaps over the last 5 years. Recently issued Documentary Evidence may be such documents relied on as may have been issued on or after 29 October 2014, to align with the proposed effective date of the MDR.

Relationship Manager Test

With respect to high value (> USD 1 million) individual accounts, the CRS requires, in order to determine tax residence, a Relationship Manager Inquiry test to be satisfied. However, the test is that of the “actual knowledge” of the relevant Relationship Manager.

Considering that a Relationship Manager will in practice form an essential and in many cases the only effective link between the Financial Institution and the account holder we cannot understand why an objective standard of knowledge is not applied.

We would recommend that the standard applied to a Relationship Manager is aligned with that of a Financial Institution of actual knowledge or having reason to know (introducing an objective test) if only to avoid a Relationship Manager turning a blind eye to obvious circumstances that would indicate avoidance.

Ongoing Monitoring

With respect to high value individual accounts, the CRS (Section III C. 7) provides that a Financial Institution is not required to reapply the due diligence procedures on an ongoing basis, save for the Relationship Manager Inquiry test, where the Relationship Manager may simply verify an existing status, without having to confirm each of their responsible accounts on an account-by-account basis (OECD CRS Commentary, para 48, pg. 125).

Ongoing monitoring of account holder status is therefore in practice reduced to an “actual knowledge” basis. In our view, the current procedures make it difficult to expose or uncover an individual that has to date successfully misrepresented their tax residence status.

Further, para 10, pg. 151 of the CRS Commentary (2nd Edition), provides guidance to Financial Institutions that a self-certificate or Documentary Evidence is not rendered unreliable or incorrect where contradictory indicia are later discovered, this is purported not of itself to affect the standard of knowledge applied to a Financial Institution. Therefore, in our view, the standard of ongoing due diligence is further eroded and weakened.

We recommend reforming these provisions to provide a positive duty to monitor, targeted at high risk accounts where recently issued Documentary Evidence has been relied upon to establish tax residence status.

Systemic Weakness: Use of Investment Entities

We also wish to bring to the OECD’s attention a structural weakness in the CRS which may exacerbate the inherent due diligence weaknesses identified above.

The CRS contains four categories of Reporting Financial Institutions: Depository Institutions, Custodial Institutions, Specified Insurance Companies and Investment Entities.

Investment Entities are further sub-divided into managing entities and managed entities. We note that in the case of a personal investment company, it is open to the beneficial owners of the company to seek establishing the company as a managed Investment Entity, by simply allowing some discretionary management of company Financial Assets (all other CRS conditions being satisfied) the company would then qualify as an Investment Entity Financial Institution with the result that Financial Institutions with which the company holds financial accounts would not be required or permitted to apply the CRS due diligence procedures to the beneficial owners of the company. Therefore, in this scenario, the obligation to apply the CRS due diligence procedures would now be entrusted not to an independent regulated entity, such as a licensed bank, but instead to the very same individual(s) that may possibly seek to rely on CBI/RBI schemes to misreport their tax residence status.

We do of course appreciate that difficult policy decisions and choices had to be made in order to arrive at the current CRS rules, and that a balance needs to be maintained not to over burden Financial Institutions with compliance obligations. However, broader market participants might be excused in feeling that as long as the due diligence procedures remain in their current form, the policy objectives of the CRS may never be attained, regardless of any action that might eventually be taken in respect of RBI/CBI schemes.

Initiatives that ought to be taken in respect of the CBI/RBI industry

It is the recommendation of Henley & Partners that the potential risk of tax evasion may be avoided by Governments insisting that all parties or agents which are part of the client acquisition, application pack preparation and submission process to be intermediaries subject to Anti-Money-Laundering (AML) regulation. The proper on-boarding of applicants to meet

equivalence of the highest AML requirements and risk-based criteria would minimise the chances of applicants being able to flout the intentions of the CRS regulations.

It is also the opinion of Henley & Partners that industry participants in the CBI/RBI programmes should be viewed as part of the solution and not part of the problem. That said, the agent market at large is lacking standards, a situation that should be addressed from several angles. Henley & Partners is prepared to lead by example.

Summary

In summary, we fully support all measures to enhance the effectiveness of the CRS, and in particular measures aimed at deterring the possible abuse (although in our view currently quite limited) of CBI/RBI programs for the purpose of circumventing the CRS. However, more broadly, we strongly recommend the OECD review the current CRS due diligence procedures, taking into account the weaknesses we and our professional advisors have identified.

Further, we recommend, in light of the results of our internal review of the uses of RBI/CBI programs, the OECD monitor the effectiveness of the MDRs, CRS Anti-Avoidance provisions, and actions taken by the local jurisdiction Regulators to deter the use of RBI/CBI schemes to circumvent the CRS, before coming to a firm policy decision, particularly involving further regulatory controls.

Finally, with regard to the CBI/RBI industry, we recommend that submission of intermediaries (sourcing clients, handling client applications and submission agents) to AML regulation will assist in helping to safeguard the many positive economic effects that CBI/RBI programs have while assuring CRS and AML compliance of clients using these programs.

Yours sincerely

For and on behalf of Henley & Partners:

Dr. Juerg Steffen
Group Chief Operating Officer

Geneva March 2018

OECD RBI/CBI Consultation Response

Preamble

The Investment Migration Council (IMC) is the worldwide association for investor immigration and is the self-governing body for over 300 members from over 40 different jurisdictions in Europe, the Middle East, Asia, the Caribbean and the Americas.

The IMC sets the standards on a global level and interacts with other professional associations, governments and international organisations in relation to investment migration.

Additionally, the IMC helps to improve public understanding of the issues faced by clients and governments in this area and promotes education and high professional standards among its members.

We fully support the policy goals of the Common Reporting Standard (CRS) and welcome recent publication of the “Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures” (MDR) and support the OECD’s continued efforts to combat arrangements designed to circumvent the CRS.

We have had an opportunity to read in draft the submissions made by our members, in particular Henley & Partners, and agree with their recommendations.

Recommendations to prevent such abuse.

CBI/RBI schemes do not of themselves offer a solution to escape reporting under the CRS. The CRS is based on the tax residence status of an individual, in most cases CBI/RBI programmes simply confer citizenship or rights to reside in a jurisdiction and not tax residence status (point 6, Consultation).



We fully accept that some promoters deliberately market RBI/CBI programmes for the purpose of assisting individuals to engage in activities highlighted by Example 1 and Example 2 (points 8-15) of the Consultation.

We note that such activity may amount to a CRS Avoidance Arrangement within the terms of Rule 1.1(e) to the MDRs, and that such promoters may in future be obliged to disclose details of their activities to their local tax authorities. This we feel will go some way towards deterring such behavior in the future.

Governance Reform

However, notwithstanding the above, we for our part intend to make amendments to our Code of Ethics and Professional Conduct 'The Code' (appendix A), to prohibit members from marketing RBI/CBI programmes that would or may constitute a CRS Avoidance Arrangement within the terms of Rule 1.1 of the MDR. Breach of the marketing prohibition would give rise to disciplinary action as laid out in our Disciplinary Rules & Procedures created to enforce the provisions of the Code of Ethics and Professional Conduct. Adherence to 'The Code' and compliance with the standards by IMC members is required, with the potential for Council Board sanctions against those who violate any Council regulations.

CRS Due Diligence Weaknesses

Correct application of the CRS due diligence procedures may help to prevent CBI/RBI schemes from being used to circumvent the CRS, however, with due respect, we do not agree that abuse can "to a large extent" (point 17, Consultation) be prevented by application of the current CRS due diligence procedures.

We recommend below a number of amendments to the current procedures, which we feel would materially support and strengthen the integrity of the CRS and provide a credible deterrent to individuals seeking to use RBI/CBI schemes to exploit the current weaknesses.



Use of TINs, Documentary Evidence

Sections III, IV and VII of the CRS sets out the procedures to be followed by Reporting Financial Institutions to identify Reportable Accounts held by individuals. Separate rules apply to existing (high and low value) and new accounts.

In the case of a new account, the account holder is required to provide a self-certificate, whilst in practice a self-certificate has also been required in the case of existing accounts with a foreign indicia, as permitted by Section III B.4, C.5(b).

A self-certificate requires a TIN and Documentary Evidence. The current procedures require account holders to self-declare their tax residence, with supporting Documentary Evidence which may simply include a valid government issued ID card or certificate of residence, which need not be a certificate of tax residence. Some jurisdictions may not issue a TIN, others may issue a TIN without the requirement of tax residence. We recommend that the production of a Certificate of Tax Residence issued by the competent Tax Authority of the jurisdiction in which the account holder claims he / she has established his tax residence should be a mandatory requirement for the supporting Documentary Evidence required in terms of CRS.

Although current procedures require Financial Institutions to reject a self-certificate or Documentary Evidence if the Financial Institution knows or has reason to know (objective standard of a reasonably prudent person) the self-certificate or Documentary Evidence is incorrect or unreliable. However, as Example 1 in the Consultation demonstrates, there is nothing in the current procedures to counter a case where an account holder simply omits to include all tax residence jurisdictions.

We recommend amendment to the current due diligence procedures to introduce a risk-based approach to the process of verifying tax residence status. Where an account holder seeks to rely on recently issued Documentary Evidence then a Financial Institution ought to treat the account as high risk and require supporting evidence of previous tax residence status, perhaps over the last 5 years. Recently issued Documentary Evidence may be such documents relied on as may have been issued on or after 29th October 2014, to align with the proposed effective date of the MDR.



Relationship Manager Test

In addition to the above due diligence procedures, with respect to high value (USD\$1 million) individual accounts, the CRS requires, to determine tax residence, a Relationship Manager inquiry test to be satisfied. However, the test is that of the “actual knowledge” of the relevant Relationship Manager.

Considering that a Relationship Manager will in practice form an essential link between the Financial Institution and the account holder we cannot understand why an object standard of knowledge is not applied. We would recommend that the standard applied to a Relationship Manager is aligned with that applied to a Financial Institution of actual knowledge or having reason to know (introducing an object test) if only to avoid a Relationship Manager from turning a blind eye to obvious circumstances that would indicate avoidance.

Ongoing Monitoring

With respect to high value individual accounts the CRS (Section III C. 7) provides that a Financial Institution is not required to reapply the due diligence procedures on an ongoing basis, save for the Relationship Manager Inquiry test, where the Relationship Manager may simply verify an existing status, without having to confirm each of their responsible accounts on an individual account-by-account basis (OECD CRS Commentary, para 48, pg. 125). Ongoing monitoring of account holder status is therefore in practice reduced to an “actual knowledge” basis. The current procedures therefore make it difficult to expose or uncover an individual that has misstated their tax residence status.

Further, para 10, pg. 151 of the CRS Commentary, provides guidance to Financial Institutions that a self-certificate or Documentary Evidence is not rendered unreliable or incorrect where contradictory indicia is later discovered, this is purported to not of itself affect the standard of knowledge applied to a Financial Institution. Therefore, the standard of ongoing due diligence is further eroded and weakened.



We recommend reform of these provisions to provide for a positive duty to monitor, targeted to high risk account where recently issued Documentary Evidence has been relied upon to establish tax residence status.

Systemic Weakness: Use of Investment Entities

We also wish to bring to the OECD's attention a structural weakness in the CRS which may exacerbate the inherent due diligence weaknesses identified above.

The CRS contains four categories of Reporting Financial Institutions: Depository Institutions, Custodial Institutions, Specified Insurance Companies and Investment Entities.

Investment Entities are further sub-divided between managing entities and managed entities. We note that in the case of an ordinary personal investment company, it is open to the promoters of the company to seek to establish the company as a managed Investment Entity, by simply allowing some discretionary management of company Financial Assets, all other CRS conditions being satisfied, the company would then qualify as an Investment Entity Financial Institution with the result that the CRS due diligence procedures would now be entrusted not to an independent regulated entity, such as a licensed bank, but instead to the very same individual that may seek to rely on a CBI/RBI to misreport his residence status.

We are of course aware that difficult policy decisions must have informed the current CRS rules, and that a balance needs to be maintained not to over burden Financial Institutions with compliance obligations. However, broader market participants might be excused in feeling concerned that they will ultimately be asked to take on a greater compliance burden than is fair given the current weaknesses of CRS due diligence procedures.

Data Protection Concerns

We would wish to bring to the OECD's attention some of the genuine fears surrounding adoption of the CRS by residence of countries that are characterized, rightly or wrongly, by such organizations such as Transparency International, Global



Witness and the OCCRP, as highly corrupt and which as a result may motivate individuals to seek to utilize CBI/RBI to circumvent the CRS.

In a wider context, we would encourage the OECD to review whether steps can be taken to strengthen the Confidentiality and Data Safeguards contained in the model form CRS Competent Authority Agreement to provide that implementing jurisdictions must enact or amend criminal statutes to provide a specific data breach offence in relation to exchanged personal data pursuant to the CRS, and to provide for automatic suspension of an exchange relationship in the event of a serious breach of the Confidentiality and Data Safeguards.

We think it is important that the OECD seek broad support for the CRS initiative by showing sensitivity to the concerns of law abiding citizens that are genuinely concerned that data may be abused and that their personal safety will be put at risk.

Conclusion

The IMC believes that the introduction of mandatory requirement for the provision of a Certificate of Tax Residence issued by the competent Tax Authority in the jurisdiction in which the account holder claims tax residence should be conclusive evidence of the said tax residence of the individual.

We also echo the concerns expressed to us that current design features of the CRS due diligence procedures may be too easily circumvented and that the policy goals of the CRS may never be fully realised so long as the current rules remain. We strongly urge the OECD to review and strengthen the CRS due diligence procedures, particularly regarding ongoing monitoring of the status of account holders.

Dr. Achim Pross

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Your ref

Our ref

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Submitted by e-mail:

CRS.Consultation@oecd.org

19 March 2018

Dear Achim,

KPMG International¹ is pleased to have the opportunity to provide comments on the public consultation document regarding Preventing Abuse of Residence by Investment Schemes to Circumvent the CRS. We support a targeted and efficient mechanism for tackling CRS circumvention using Citizenship by Investment or Residence by Investment (CBI/RBI) schemes as a way to evade taxation.

Clearly the primary responsibility for ensure proper reporting should fall on the individual, who should correctly report every jurisdiction in which he or she is tax resident. However, the consultation is predicated on the fact that this does not always happen. The party that is next best placed to ensure compliance is the jurisdiction which grants CBI/RBI status.

The purpose of our response is, therefore, to suggest an approach the OECD can take to prevent the abuse of the CBI/RBI schemes using an exchange of rulings mechanism similar to the one developed under Action 5 of the Base Erosion and Profit Shifting Project. In addition, jurisdictions that provide CBI/RBI schemes should exchange CRS reporting about recipients of such schemes with the other jurisdiction(s) of tax residence of those recipients.

In brief, we suggest the following:

¹ KPMG is a global network of professional services firms providing Audit, Tax and Advisory services. We operate in 154 countries and territories and have 200,000 people working in member firms around the world. The independent member firms of the KPMG network are affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. Each KPMG firm is a legally distinct and separate entity and describes itself as such.

- Exchange of rulings – For all CBI/RBI status grants (pre-existing and new), a jurisdiction should exchange with the recipient's original tax residence jurisdiction(s) the recipient's date of birth and taxpayer ID number in the original tax residence jurisdiction(s), together with any certification of the CBI/RBI status. In addition, the CBI/RBI jurisdiction should exchange information with the original tax residence jurisdiction(s) about any entities created in their jurisdiction by the CBI/RBI status recipient. As a second step, the original tax residence jurisdiction(s) should confirm the continued tax residence or not of the individual who obtained CBI/RBI status.
- Onward transmission of financial account reporting - If the individual is still a tax resident in the original tax residence jurisdiction(s), then the jurisdiction that granted the CBI/RBI status would send any financial account reporting it receives with regard to that person or the entities they have created to the original tax residence jurisdiction(s).

This may lead to some duplicative reporting to the original tax residence jurisdiction(s) where individuals disclose all their tax residences to the financial institution. However, we believe the most effective targeting of potential abuse is for the CBI/RBI granting country to enable the original tax residence jurisdiction(s) to monitor those individuals receiving such CBI/RBI status.

We would be pleased to discuss our suggestion at your convenience.

Yours sincerely,



Christopher Morgan, Head of Global Tax Policy

KPMG International

PIER PAOLO FRANCO
Lexhack

To: International Co-operation and Tax Administration Division -
OECD/CTPA, Paris

Subject: Re: OECD releases consultation document on misuse of residence
by investment schemes to circumvent the Common Reporting
Standard

Fiesso D'Artico, March 19, 2018.

Dear Sirs,

we welcome the opportunity to submit our considerations on misuse of residence by investment schemes to circumvent the Common Reporting Standard ("CRS"). Moreover, we recognise and thank OECD for its work on identifying issues and loopholes in the exchange of fiscal information initiatives, thus recognising the need of a more equal and fair taxation at a worldwide level.

This comment focuses on Italian measures of residence by investment ("RbI"), as targeted to individuals - with only a brief consideration on legal entities, as apparently outside the scope of the consultation.

Italian Residence by Investments scheme

Italy approved such a regime in 2016, by the means of a strictly speaking investment scheme, aimed at non-EU residents, and another - optional - lump sum taxation regime on foreign revenue and gains, targeted at EU residents also. Both provisions are already implemented by the due administrative acts. Those schemes really had a very different characterisation on respect of that reported in some scholarly and NGOs works, apparently on the basis of a legal firm website¹.

¹ KNOBEL and HEITMÜLLER (2018), *Citizenship and Residency by Investment Schemes: Potential to avoid the Common Reporting Standard for Automatic Exchange of Information*, p. 14, available at https://www.taxjustice.net/wp-content/uploads/2018/03/20180305_Citizenship-and-Residency-by-Investment-FINAL.pdf (retrieved March 16, 2018); CHRISTIANS (2017a), *The Price of Entry: Latest Research plus Infographic* (April 18, 2017), available at <http://taxpol.blogspot.it/2017/04/the-price-of-entry-latest-research-plus.html> (retrieved March 16, 2018). Cfr. Walsh Worldwide Immigration Services at <http://www.walshww.com/italy-investor-visa/> (retrieved 16th march, 2018).

Specifically, Law 232/2016² amended the Immigration Act (Law 286/1998, Testo Unico sull'Immigrazione) with article 26 bis, providing a “regime for investors” (Ingresso e Soggiorno per Investitori) for immigrants who:

- a) invest 2M in national treasury bonds retaining them for at least two years,
- b) invest 1M in national equity for at least two years,
- c) invest 500K in equity of a national “innovative startup” (this may provide corporate taxation arbitrage, particularly coupled with the Italian patent box),
- d) give 1M in charity activities or preservation of cultural heritage (possibly resulting also in tax and/or tax base deduction).

This visa regime, extensible to relatives of the investor, provides a fast-track and out of the roof limit to access Italian territory for non-Schengen people. Actual and definitive citizenship status, however, is given only according to ordinary rules, established by Law 91/1992.

That said, according to the recently introduced³ “new affluent residents regime” (article 24 bis of the Direct Revenue Taxation Act: DPR 917/1986, Testo Unico delle Imposte sui Redditi), tax residency status can be given⁴ to any foreign national willing to pay - on option - a lump sum flat tax of 100,000 euro per year, extended to any relative with other 25,000 euro per annum, as a “substitutive tax” on all their foreign income and gains⁵. Thus, excluding from the forfait taxation any national income. The substitutive tax exhausts the tax levy also on revenue and gains arising from tax havens and in application of CFCs rules. The regime may be applied for 15 consecutive fiscal years, but optionally withdrawn by the new resident.

To our knowledge, there are not yet statistics about these type of regimes, singularly considered or coupled, nor there are specific provisions in law or administrative measures to eventually make them public⁶. According to press, ministerial sources recently stated that on an investors rendezvous in London participated at least 150 people or so.

In principle, strict anti-money laundering and counter terrorism legislative provisions are in place to assess investors' wealth's legitimate origin (Legislative Decree 231/2007 as lastly amended by 90/2017).

This regime applies upon a successful ruling (*interpello*) with Italian tax authority. The tax administration transmits information assessed in that ruling to latest self-declared jurisdictions of residence of the claimant.

Other incentivizing schemes exist to attract scholars, researchers and other qualified people or expatriated workers (generally, resulting in partial exemption from tax levy on national qualified wages and income, up to the 90% of the tax base and the duration of four fiscal years).

² So-called budget law 2017.

³ By the same Law 232/2016.

⁴ Apparently, this means that Italian tax authorities will give to the applicant a residence certificate, purposely to be used according to Double Tax Conventions (“DTC”) and/or with reporting intermediaries.

⁵ An anti-avoidance measure excludes from the substitutive forfeited tax, and only for the first 5 years of application of the regime, the gains from certain equity sales.

⁶ It is to say, however, that it is foreseeable that the Director of Italian Revenue Agency will be called to expose those data in Parliament at least once a year.

Finally, is to say that many recently enacted provisions to attract corporate investments and business incorporation appear somewhat outside the scope of the consultation. However, accordingly to the OECD and EU efforts to disclose tax rulings having huge effect on corporate tax base, we cite the program of incentives for 30M worth investment each, which is to be accessed only upon successful ruling with Italian tax authority (*interpello*). Those rulings, indeed, not seem to be easily classified as APA or any other reportable instruments according to perspective legislative measures at international level, at least without a clear standing by the Italian tax administration.

Considerations about Italian RbI schemes

As regard to CRS regime, the Italian schemes seems not to pose keen problems on exchange of information at international level (“AEOI”). Particularly considering Italian tax administration efficiency and powerful investigative powers⁷, which comprises:

- automatic controls on tax returns discloses on foreign investments of residents (enacted by AEOI itself),
- automatic controls on financial accounts and the transactions therein,
- planned controls on selective list of taxpayers transferring abroad (that is: the reciprocal of the considered case).

Above all, it is to say that the provision according to which any information disclosed by the taxpayer in the preemptive ruling, to access the RbI option, is to be sent backward to the last declared residence of her, it is the most effective way to guarantee both the hopes⁸ of Italian legislation and the rights of the jurisdiction of provenance to assess the genuinity of her behaviour (by the way of a fair application of the Article 4 Model DTC OECD, as we will see soon after). It is to note, at this regard, that the provision of law refers to any administrative mean of international cooperation in fiscal matters, so it is not tailored to a specific instrument or arrangement (and thus could eventually overcome the limit of provenance jurisdiction non participant in CRS⁹).

In any case, the screening of applications must really be substantial in nature, for the purpose both to tackle tax evasion and money-laundering.

Considerations about the Italian position with respect to other countries RbI regimes

Those regimes as a whole, however, pose an high grade of inequality both as a national solidarity issue and to the original domicile countries.¹⁰ Actually, this is a political matter - strictly tied to the choice between source or residence taxation.

We think that a strict interpretation of Article 4 of the OECD Model Convention, first paragraph, second sentence¹¹, could well address this issue in the Commentary to the

⁷ Cfr. OECD (2017a), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Italy 2017 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris, p. 63 ss..

⁸ Though «Some countries have examined their programs and concluded that there is insufficient evidence of the promised benefits», CHRISTIANS (2017b), *Buying in: Residence and Citizenship by Investment* (September 26, 2017), available at SSRN: <https://ssrn.com/abstract=3043325> (retrieved 14th march 2018).

⁹ Albeit these countries will supposedly disregard any information received (see KNOBEL and HEITMÜLLER (2018), p. 8 ss.). Probably, the United States could adopt a different behaviour, even if we didn't analyzed Italian RbI schemes as regard to the FACTA agreement.

¹⁰ CHRISTIANS (2017b).

OECD Model¹², particularly having regard to classical commonwealth-inspired res-non-dom regimes and/or remittance ones¹³. In spite of this, the conclusions will be much more clearer if the expression “liable to tax” (as a legal situation) would be substituted by “subject to tax” (as a matter of fact)¹⁴.¹⁵

Anyway, the longstanding dispute on Art. 4(1), second sentence, demonstrates that the starting point of any provision on this matter has to be a clear definition of “RbI and CbI scheme”, possibly as opposed to the ordinary national tax regime.

That said, the generalized implementation of a principle of backward information upon new RbI residents - as that provided by the Italian scheme - could stimulate national courts to enhance their (hopefully internationally coherent) interpretation of Art. 4(1), 2nd period, OECD DTC. That way the tax administration of the last residence country might assess the effectiveness of the residential change according to Model tie-break rules or merely resorting to domestic criteria in the case of an RbI schemes not covered by Article 4.

Only changes needed to the XML DTD adopted by the OECD, would be a date field to declare the year of the residency change, a text field receiving previous jurisdiction id and a boolean flag marking the individual as suspicious - and thus to be communicated backward - or not, according to identified RbI national schemes. Neither obligations on reporting intermediaries side would seems to weight with this regard.

The necessity to collect and transmit to their own tax administration the informations on residents account, though, we suppose could be seen as a major change in CRS - and in many countries juridical order too¹⁶.

This method, however, would be effective against “voluntary secrecy” jurisdictions participating in CRS. Clearly, jurisdictions not participating in CRS altogether continue to constitute a blocking factor in the above information flow.

We very much hope you will find our comments useful.

Sincerely,

Pier Paolo Franco

pierpaolo.franco@lexhack.it

¹¹ «[The term “resident”], however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein».

¹² See paragraphs 8.1-3: OECD (2017b), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing, Paris, pp. 106-107.

¹³ Cfr. DIRIKIS (2010), “The Expression ‘Liable to Tax by Reason of His Domicile, Residence’ Under Art. 4(1) of the OECD Model Convention”, in MAISTO, *Residence of Individuals under Tax Treaties and EC Law*, IBFD Publications, Amsterdam, p. 135 ss.; ISMER and RIEMER (2015), in REIMER and RUST (eds), Klaus Vogel on Double Taxation Conventions, 4th edn, Article 4 at m.no. 45.

¹⁴ ISMER and RIEMER (2015), cit., m.no. 29.

¹⁵ We did not analyze the implications of this perspective in the light of corporate taxation, particularly, branch exemption regimes should be examined.

¹⁶ On the contrary, as already said, in Italy «banks are required to report monthly and annually substantive amount of information in respect of their accounts to the Register of Accounts kept by AE. The reported information includes account balances, reports on transactions and identification of beneficial owners of the account holders» OECD (2017a), p. 61.

“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

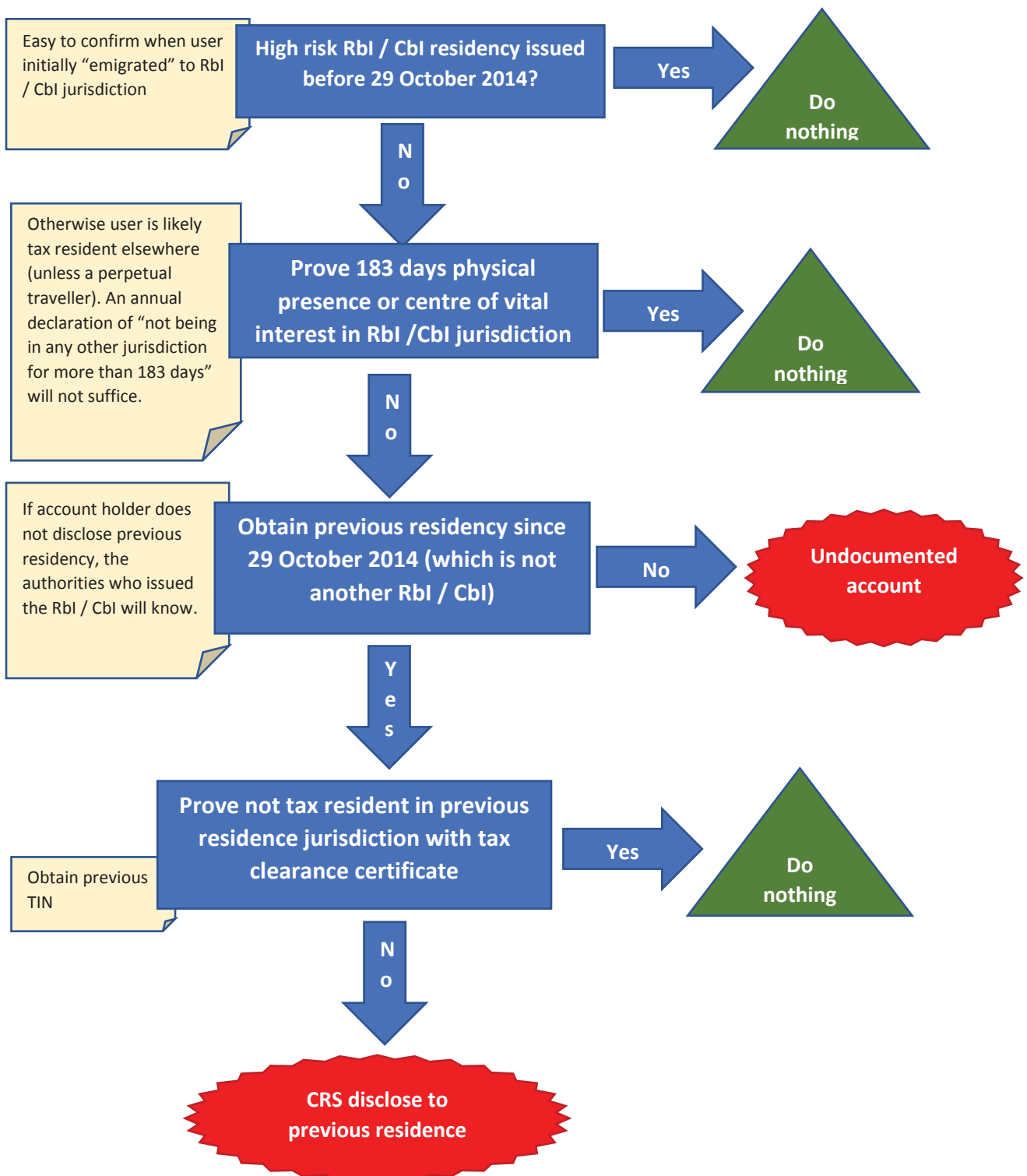
There are over 70 jurisdictions offering Residence-by-Investment (Rbi) and / or Citizenship-by-Investment (Cbi) schemes. Many of these present a risk of being used to circumvent the CRS due to a combination of fiscal advantages and minimum presence required. These lackadaisical residence conditions are 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 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 =====

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Rag. Sergio Pennuto
Avv. Maurizio Bernardi
Dott. Franco Barro
Dott. Pier Luca Mazza
Dott. Marcello Romano
Avv. Andrea Gottardo
Dott. Lorenzo Banfi
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Dott. Gianni Tanca
Avv. Dario Taroni
Avv. Ermanno Vaglio
Dott. Davide Villa
Dott. Francesco Zondini

Milan, 19 march 2018

To the attention of:

International Co-operation and tax Administration Division

OECD/CTPA

Sent by email at: crs.consultation@oecd.org

SUBJECT: PREVENTING ABUSE OF RESIDENCE BY INVESTMENT SCHEMES TO CIRCUMVENT THE CRS. CONSULTATION DOCUMENT.

Studio Pirola Pennuto Zei e Associati welcomes the opportunity to comment on the public discussion draft on the *Preventing Abuse of Residence by Investment Schemes to Circumvent the CRS* ("the discussion draft") and to contribute further to the development of the OECD's work of building a modern framework for international tax.

In responding to the discussion draft, we would like to share our comments about CRS and the new Italian Flat Tax Regime, which is linked to the acquisition of an Italian tax residence and it is addressed to attract HNWI's transferring their tax residence to Italy.

Such attractive tax regime is similar to the UK non-dom regime and provide for a deviation from the world-wide taxation principle, on optional basis, by which non-Italian sourced income and wealth is non-taxable in Italy. A flat tax of euro 100k per annum absorb taxation on foreign income/wealth.

The regime is applicable to new Italian tax resident individuals. According to the Italian fiscal law, art. 2, par 2 ITC, an individual is considered as tax resident in Italy if, for at least 183 days in a fiscal year, one of the following condition is met:

- the individual is registered with the Office of Records of the Resident Population ("Anagrafe"); or
- the individual is domiciled within the territory of the State (the domicile is the place where the individual has established the principal centre of his business and family interests, i.e. "centre of vital interests"); or
- the individual is resident within the territory of the State (the residence is place where the person has his habitual abode).

Kindly note that the enrolment in the "Anagrafe" (Register of the Italian resident population) is a *legal presumption* of tax residence in Italy, without the need to actually stay in Italy for more than 183 days or to establish a centre of life interest in Italy, and may be used to circumvent CRS application. The law does not impose to be physically present in Italy and no checks are done in this respect once the registration with the Anagrafe is achieved.

The Italian scheme could show up like a "Residence by Investment" (RBI) scheme and while it could present some risk of being used to circumvent the CRS, some anti-avoidance provisions are provided:

- the flat tax regime does not prevent CRS exchange of information on financial assets held outside Italy; a third party State may use exchange of information under DTT to receive information from Italian tax authorities;
- a check-list in which individuals have to indicate all the countries of previous tax residence in the last 10 years;
- the Italian tax authorities will apply AML procedure in examining flat tax regime applications;

- the Italian tax authorities, upon acceptance of the flat tax regime application, will inform the State of last tax residence about the regime in place.

Although the Italian flat tax regime contains the above anti-avoidance provisions, it can still be used to circumvent reporting under the CRS (matching the example 1 at p. 8 of the consultation documents) under certain circumstances.

Example 1:

X is a France tax resident with hidden assets in Bahamas, that has recently implemented CRS approach. In order to circumvent CRS he may register as a tax resident of Italy (no immigration procedure needed for EU nationals) under the flat tax regime.

He will show an Italian tax residence certificate to the Bahamas bank and he will be considered as tax resident of Italy for CRS purposes.

The Bahamas authorities will exchange information with Italy under CRS approach and not with France (last State of residence or actual State of residence).

The Italian tax authorities, upon acceptance of the flat tax regime, will inform French authorities, last State of residence) that ignores Mr. X assets in Bahamas.

Example 2:

X is a France tax resident with hidden assets in Bahamas, that has recently implemented CRS approach. In order to circumvent CRS he may (i) first register as a tax resident of UK, under local non-dom regime, then, one tax period later, (ii) he may register in Italy under the flat tax regime.

He will first show a UK residence to the Bahamas bank and then an Italian residence and he will be ultimately considered as tax resident of Italy for CRS purposes.

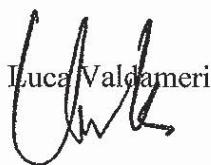
The Bahamas authorities will exchange information with Italy under CRS approach and not with France (last State of residence or actual State of residence).

The Italian tax authorities, upon acceptance of the flat tax regime, will inform UK authorities, last State of residence) that ignores Mr. X assets in Bahamas, as well as French authorities.

To prevent the use of Italian flat tax regime (or, in general, the use of the concept of a *legal presumption* of tax residence in Italy with Anagrafe registration) to circumvent CRS and AML provisions we would suggest the following:

- the Italian tax authorities, upon acceptance of the flat tax regime application, shall not only inform the State of last tax residence but also (i) the State of citizenship and (ii) the State(s) of residence in the last 5 years prior to acquiring the Italian tax residence (to avoid residence triangulations);
- introduce a preliminary disclosure of foreign financial assets when filing the flat tax regime application (the applicant is not currently required to do so), to enable AML check by the Italian tax authorities (this would be addressed to prevent tentative of money laundering by using the flat tax regime).

Best Regards,

Luca Valdameri


Emanuele Viotto


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19 March 2018

International Co-operation and
Tax Administration Division,
OECD/CTPA

Dear Sir/Madam,

S-RM Intelligence and Risk Consulting Limited ('S-RM' or 'We') is a UK-headquartered global provider of business intelligence, risk management and cyber security services. This letter is in response to your publication of the consultation document: *PREVENTING ABUSE OF RESIDENCE BY INVESTMENT SCHEMES TO CIRCUMVENT THE CRS*.

S-RM are one of the panel of due diligence providers to the Citizenship by Investment Units of the Governments of the Commonwealth of Dominica, St Kitts and Nevis, Antigua and Barbuda and Saint Lucia (together, 'the units'). As such, we believe the below information on our enhanced due diligence reporting and the units' application processes will assist your review of "residence by investment" (RBI) and "citizenship by investment" (CBI) schemes.

The units have extensive disclosure requirements for each application, to be supported by documentation, before an Applicant is submitted for vetting. S-RM's due diligence reports provide a comprehensive understanding of an Applicant's personal and business profile, whilst verifying their disclosed information and supporting documents, enabling the units to make an informed decision when accepting or declining an Applicant and their dependents. The level of detail provided also greatly inhibits individuals using the CBI and RBI schemes to circumvent the Common Reporting Standard ('CRS'). Particularly as the Application processes require the disclosure of bank statements; enabling the necessary CRS reporting.

METHODOLOGY

OPEN SOURCE ANALYTICS

Our teams are highly trained in terms of analysis, information gathering and ethical conduct. Teams receive regular training in open-source intelligence (OSINT) and human-source intelligence (HUMINT) gathering techniques and analysis, supported by numerous intentional compliance, due diligence, litigation and media databases. Including multi-language searches against news archives, corporate and legal databases, social media, and industry and region-specific blogs, magazines and newsletters. In addition, we maintain a significant proprietary due diligence research database which is used for each project. We have a consistent analytical framework for due diligence reporting across the regional teams, which supports consistent, high-quality output.

DOCUMENT REVIEW AND VERIFICATION

We review the documentation submitted by the Applicant. Where possible, we verify the authenticity of these documents, such as passports or documents supporting an Applicant's address, with the issuing authority.

HUMAN SOURCE INTELLIGENCE

Through our local source networks we provide intelligence that goes well beyond the public record. Working with trusted local contacts, we gain access to critical information and targeted insights that help Citizenship by Investment Unit understand the full picture. Our contacts typically include venture partners, employees, industry consultants, journalists, and former regulators. We also conduct robust source identification exercises to identify contacts with direct knowledge of companies, individuals and events.

Our HUMINT analysis combines assessment of the reliability of sources in terms of access to information and biases, the credibility of information through detailed fact-checking and contextual analysis, and corroboration of information through independent sources. We provide detailed information regarding our sources and their access and biases to ensure that intelligence can be used by the unit to make informed decisions.

CBI ENHANCED DUE DILIGENCE REPORTS

Each enhanced due diligence project includes thorough examination of the information provided by the Applicant. This information is then cross checked with the findings of S-RM independent investigations.

Each report covers the following areas:

Address Verification

Each Applicant is required to detail their residential history for at least the last ten years. S-RM undertake verification of their current residential address, either through a site visit or contacts in country familiar with the Applicant.

Passport verification

The Applicant and dependents passports are verified through algorithmic check and by the respective issuing authority.

Police clearance certificates

Applicants and all dependents are required to provide certificates evidencing no criminal records for each jurisdiction they have resided in within the last ten years. If any further jurisdictions are identified by S-RM, police clearance certificates are requested by the units.

The authenticity of these police clearance certificates is verified by S-RM with the issuing authorities.

Business profile

Applicants are required to detail all business interests and employment activity for at least the last ten years. These positions are verified by S-RM and further searches conducted to ensure there are no omissions. Investigations are undertaken to ensure the legitimacy of these entities, both in terms of registration and their business activities.

Reputation

A thorough analysis is conducted of the Applicant's business reputation, both through online media and litigation searches and through contact with professional acquaintances, competitors, industry bodies and a variety of other sources, to ensure the Applicant presents no reputational concerns.

AML/CTF/ABC

The Applicant is required to provide supporting documents to support their reported financial information, including corporate filings (such as incorporation documents or annual accounts), title deeds for land or property assets, stock portfolios and bank statements. This information is then analysed by the S-RM team for any signs of illicit activity. The Applicant's business interests are also investigated by our in country contacts to ensure there are no allegations of illicit activity.

There is then a detailed assessment of anti-bribery and corruption (ABC), anti-money laundering (AML), counter-terrorism funding (CTF) and related reputational and integrity risks.

Sanctions, wanted lists & political exposure

The Applicant, their family, corporate affiliations and associates are checked through the global wanted lists and sanctions database to which we subscribe.¹

¹ These include, but are not limited to: US Treasury Blocked Persons – Specially Designated Nationals List; HM Treasury List of Financial Sanctions Targets in the UK; US Government Terrorist Watchlist; EU List of Persons, Groups and Entities Subject to EU Financial Sanctions; US Federal Bureau of Investigation Most Wanted List; Interpol Wanted Persons; UN

The same individuals are run through global compliance databases to ascertain any political exposure. Information from our in country country contacts is also used to determine any political links held and the risk they may present.

ONGOING MONITORING

S-RM perform constant live monitoring for 5 years of the Applicant, their primary business interests and associates through our bespoke adverse media, sanctions, watch list, legal, and political exposure monitoring product.

S-RM gathers data in over 90 languages from over 80,000 news sources and 2.5 million social media feeds. This ranges from premium licensed print media and TV to radio, open-source blogs and forums, sanctions and watch lists, and PEP databases. Working with our technology partners, researchers use AI-enabled analytics to sift through over 5 million articles per day to find relevant news and events. Using complex search queries, we find information on the people and businesses of direct interest, as well as those connected to them, to ensure we have the full picture covered.

I would like to finish this letter by highlighting that S-RM provide due diligence services to numerous global financial institutions for Know Your Customer ('KYC') purposes and that the level of due diligence requested by the units considerably exceeds the depth of report typically requested by these institutions.

Should you have any queries regarding the services we provide, please do not hesitate to get in touch.

Yours sincerely,



Heyrick Bond Gunning
Chief Executive Officer

List of Individuals and Entities Associated with Al-Qaida and the Taliban; World Bank Listing of Ineligible Firms and Individuals. Further regional searches are undertaken dependent on the Applicant's profile.

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Page 3 of 3

STEP response to Consultation document PREVENTING ABUSE OF RESIDENCE BY INVESTMENT SCHEMES TO CIRCUMVENT THE CRS

1. STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.
2. STEP takes this opportunity to comment on the Consultation on preventing abuse of residence by investment schemes to circumvent the CRS given the importance of the issue to its members and their clients.

Comments

3. The OECD consultation paper notes that “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. While recognising that individuals may be interested in these schemes for a number of legitimate reasons, the consultation paper notes that they can also offer a backdoor to money-launderers and tax-evaders. In addition, the consultation paper notes that from “information released in the market place and obtained through the OECD’s CRS public disclosure facility” the abuse of RBI and CBI schemes to circumvent reporting under the Common Reporting Standard (CRS) has been highlighted.
4. The OECD is also considering a range of additional approaches to prevent the abuse of CBI/RBI schemes. This may include 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.

5. The Consultation Paper notes that 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. 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.
6. Nevertheless, the Consultation Paper notes that 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 (RFI). 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).
7. The Consultation Paper states that OECD's initial assessment is that the risk of abuse of CBI/RBI schemes is particularly high when the scheme has one or more characteristics that the document outlines. :
8. 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:
 - 8.1 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;

- 8.2 The requirement to instruct Account Holders to include all jurisdictions of tax residence in their self-certification.
 - 8.3 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.
9. A RFI is required to obtain a self-certification that allows the RFI to determine a Reportable Person's or Controlling Person's residence for tax purposes. It can confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of the account or from carrying out the relevant searches set out in the Standard, including any documentation collected pursuant to AML/KYC Procedures. It can rely on such self-certification if it does not know or have reason to know that the self-certification is incorrect or unreliable. As confirmed in the Standard, a RFI is not expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification (paragraph 23, page 133).
10. A number of points arise out of this:
- 10.1 The CBI/RBI scheme only works if the Reporting Person does not provide information about other jurisdictions in which he is tax resident. RFIs will have carried out due diligence, including requesting self-certification from the Reporting Person as to all jurisdictions in which he is tax resident.
 - 10.2 We understand that the purpose behind any additional steps being taken is to (1) enable RFIs to identify high risk jurisdictions; (2) provide clear guidance to RFIs as to what additional due diligence should be carried out in relation to account holders tax resident in such jurisdictions.

Alternative Options

11. To achieve its stated aim of preventing abuse by residents by investment schemes to circumvent the CRS, there are potentially other routes that could be taken. For example, the OECD could formally identify which jurisdictions it considers a high-risk for the purposes the CBI/RBI scheme. The identifying features outlined above are sufficiently wide that they could catch a relatively large number of jurisdictions.

11.1 Alternatives:

- (a) One alternative would be to permit Participating Jurisdictions to draw up their own lists of which jurisdictions are considered to be a high-risk for the purposes of a CBI/RBI scheme. This is much less desirable as it would mean that different Reporting Jurisdictions could take different views which would inevitably result in inconsistent reporting under the Standard.
- (b) Another alternative would be to leave it up to individual RFIs to identify which jurisdictions should be considered a high/risk of a CBI/RBI scheme. This is contrary to the Standard which expressly states that RFIs are not under an obligation to carry out an independent legal analysis of relevant tax laws. This would put an unreasonable burden on RFIs. Different RFIs would take different views and this would inevitably lead to inconsistent reporting under the Standard.

- 11.2 Once the list of high-risk jurisdictions is drawn up, the Standard could be amended to provide that RFIs will need to obtain additional information about individuals claiming tax residence in that jurisdiction.

- (a) As the OECD notes, the majority of individuals who are tax resident in that jurisdiction will have provided correct information to the RFI, either on the basis that it is their only jurisdiction of tax residence or they have provided full information about all other jurisdictions of tax residence. Requiring all RFIs to carry out additional investigations with respect to residents of such jurisdictions will place an additional burden upon RFIs

(particularly those based in the relevant jurisdiction). Any requirements therefore must be proportionate to the risk.

- (b) If the RFI as part of its enquiries carried out pursuant to the Standard is aware that the Reportable Person is only tax resident in a CBI/RFI country or is resident in a CBI/RBI jurisdiction but is also resident in another jurisdiction which is not a Participating Jurisdiction (a 'Relevant Reportable Person') and the RFI does not have a self-certification for such Relevant Reportable Person they should obtain a self-certification from such Relevant Reportable Person to confirm that he is not tax resident in any other jurisdiction.
- (c) If the RFI as part of its enquiries carried out pursuant to the Standard is aware that the Relevant Reportable Person previously was tax resident in another jurisdiction on or after [2014 but within 6 years [suggested as most jurisdictions require tax payers to keep records for a maximum period of 6 years] of the year in which the enquiry is made] the Relevant Reportable Person could be required to provide satisfactory evidence to the RFI to demonstrate that he has ceased to be tax resident in that other jurisdiction, failing which the RFI should provide a report to that other jurisdiction. Evidence could be provided by a letter from an independent lawyer or accountant or RFI carrying on business in that other jurisdiction or confirmation from the tax authorities of that other jurisdiction.
- (d) If on the opening of a Reportable Account, the Relevant Reportable Person provides evidence that (1) he is only tax resident in a CBI/RBI jurisdiction (or, in addition, he is resident in a Non-Participating Jurisdiction); and (2) he became tax resident in that jurisdiction after [2014] and within [six] years of opening the account, the Relevant Reportable Person could be asked to provide satisfactory evidence to the RFI that he is only tax resident in that CBI/RBI jurisdiction (or in that CBI/RBI

jurisdiction and Non-Participating Jurisdiction). Evidence could be provided by a letter from an independent lawyer or accountant or RFI carrying on business in the CBI/RFI jurisdiction (provided that the CBI/RFI jurisdiction is a Participating Jurisdiction).

- (e) Similar requirements could apply where the Relevant Reportable Person provides evidence that he is only tax resident in a Non-Participating Jurisdiction, excluding the US which is subject to FATCA.

Conclusion

- 12. The current approach by the OECD is seen as too broad and unlikely to help the organisation achieve its aims. Our alternative approach, as outlined above, suggests a more targeted scheme should be more successful.
- 13. STEP would be happy to participate in future consultations and discussions on the subject.

OECD consultation - misuse of residence by investment schemes to circumvent the Common Reporting Standard

19.03.2018

With the present document, Transparency International aims to respond to the open consultation on misuse of residence by investment schemes to circumvent the Common Reporting Standard.

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

Recent media reports¹ have again shown that without sufficient integrity checks in place, citizenship and residence by investment schemes are at risk of abuse by corrupt and criminal interests.

Therefore, our recommendations will focus on the due diligence processes and overall transparency and accountability mechanisms put in place by countries offering these schemes.

Due Diligence to be carried out as part of the residence or citizenship-by-investment application process

All applicants for residence and citizenship-by-investment schemes should be subject to comprehensive due diligence checks. These checks should be extended to all dependents of the applicants over the age of 12.

In particular, the following must be applied:

- There should be no time restrictions on how long the due diligence process should take.
- Checks must be conducted in local languages and in all jurisdictions the applicant has resided for a period of more than six months. In case the applicant holds more than one citizenship, checks must be conducted in all jurisdictions.
- Information provided by the applicant must be independently verified.
- Suspicious applications must be reported in due time to the Financial Intelligence Unit (or relevant competent authority) and relevant law enforcement authorities.
- Authorities should publish names of successful applicants and consider without any deadline any report from the public that indicates false statements provided by and concerning the applicant or family members.

¹ <https://www.occrp.org/en/goldforvisas/>

The following checks must be adopted as standard:

- **Sanctions lists checks.** The applicant's names should be checked against comprehensive sanctions and terrorists list, lists of politically exposed people, as well as regulatory and law enforcement advisories globally.
- **Individual business interest checks in all jurisdictions that the applicant has had significant presence or business presence.** Checks of any firms that the subject may be currently or formerly associated as a director, shareholder or any other substantial capacity.
- **Asset searches in all jurisdictions that the applicant has resided or had significant presence or business presence.** Checks of available real estate and/or motor vehicle/vessel registrations to identify any assets that may be owned.
- **Full English and local language media and internet searches.** Searches should be conducted using naming combinations that allow for coverage of all and any spelling, transliteration and naming variation of the subjects' names.
- **Education and employment verification.** Checks of public domain and contacts with institutions listed by the applicant to confirm employment and education records.
- **Source of funds verification.** The applicant should be required to provide evidence on the sources of funds invested as part of the scheme. Checks should be conducted to ensure the applicant's wealth is not disproportionate to their known lawful sources of income.
- **Court records verification.** Checks of applicable civil and criminal court records, including for pending charges related to crimes of corruption, money laundering and tax evasion, among others.
- **Criminal record verification.** Applicants should provide a clean criminal record certificate issues by the competent authority of the State of residence and of origin of the applicant.
- **Bankruptcy/insolvency.** Checks of applicable court records or records of other authorities that deal with insolvency.
- **Regulatory checks.** Checks against local regulatory bodies' blacklists.
- **Undeclared second nationality checks**
- **Business intelligence research.** Interviews with well-placed individuals to check for political connections/exposure; source of wealth and professional experience; links to organized crime; suggestions of involvement in money laundering, corruption and other illegal activities; dealings with sanctioned entities or states, and social and environmental responsibility.

National governments should maintain primary responsibility for conducting due diligence as well as accepting or rejecting applicants. However, if due diligence is outsourced to a third party, a proven track record in due diligence must be required, as well as an enhanced level of due diligence on the third party provider.

Moreover, to prevent conflicts of interest, agencies responsible for conducting due diligence should not have a commercial or corporate stake in the programme, such as offering services, advice or promoting the programme. They should also not have suppliers or advisors of such programmes among their clients, and should not be remunerated against the number of successful applications processed.

It is critical that governments ensure that they fully understand how the sources and research techniques applied by the provider adhere to the principles on best-practice methodology outlined above. In addition, it is important that only one government department is responsible for receiving and assessing enhanced due diligence (EDD) reports, and that their staff have sufficient training and resources to scrutinize the reports. Should a government department receive a due diligence report

that identifies risk, it must be discussed with the relevant agency to ensure that the government has a comprehensive picture of the type and level of risk posed. There must be a clear policy in place which ensures that agencies must disclose any suspicious information uncovered by EDD checks to the relevant government department and law enforcement agency.

Transparency and accountability of citizenship and residency schemes

- Information, in at least annual breakdown, regarding the number of applications received (by country of origin), granted, refused and the agents involved in the process should be publicly available in open data format.
- A list of all individuals and their dependants granted citizenship under the programme, including information on their country of origin and multiple citizenships, should be published in the official gazette and made available online in open data format.
- Authorities should monitor successful applicants to ensure they fulfil the requirements of the programme (e.g. maintaining residence in the country, reputable conduct) after citizenship is granted. Statistics related to checks conducted by authorities and cases of deprivation of citizenship should be published online in open data format.
- Adequate notes and documents relating to decisions must be kept on file by the relevant government department.
- Properties purchased as part of the programme should be registered in the name of the applicant. Properties owned through domestic or offshore companies should not qualify.
- Any investment made as part of the programme should be transferred from the applicant's personal bank account
- Information on the funds received through the citizenship or residency programme and the amounts allocated to relevant ministries, development, environmental or social funds, the programme concessionaire or operator and other agents involved in the application process should be made available online.
- Information on how funds allocated to environmental, social or development funds are used should be publicly available.

- Both the funds and the operation of the scheme as a whole must be subject to regular audits. Audit findings and recommendations should be published.
- Whistleblowing protection mechanisms and safe reporting channels should be in place for government staff and citizens to report concerns.