# The OECD's campaign against citizenship by investment: the story so far

The Organisation for Economic Co-operation and Development fired a further salvo at the offshore world's burgeoning citizenship-by-investment and residency-by-investment industry this month, claiming that it provides high-net-worth individuals with a smokescreen under which they can avoid reporting their wealth in accordance with the Common Reporting Standard.

The OECD is arguing that residence- and citizenship-by-investment (CBI/RBI) schemes, often referred to as golden passports or visas, are useful tools for people who want to stop assets that they hold in foreign countries from being reported in line with its Common Reporting Standard, which is part of a wider reporting package sometimes known as GATCA or 'Global *FATCA*,' after the acronym for the US *Foreign Account Tax Compliance Act 2010*.

### Offshore jurisdictions under suspicion

The Paris-based organisation is particularly keen to stop identity cards, residence permits and other documents obtained through CBI/RBI schemes from being used to misrepresent an individual's jurisdiction(s) of tax residence. With this in mind, it published a paper on the subject in February and has also published some 'analysis' recently. The publicly available results of its analysis, however, amount to little more than allegations, naming several CBI/RBI schemes or 'programmes' without going into much detail. There is some discrepancy between the press release, which mentions Columbia as a venue for "potentially high-risk CBI/RBI schemes," and the analysis page, which does not list that jurisdiction as a "scheme that potentially poses a high-risk to the integrity of CRS" but does list the schemes of Mauritius, Monaco and Montserrat, which do not appear in the press release.

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Other schemes common to both lists are those of Antigua and Barbuda, the Bahamas, Bahrain, Barbados, Cyprus, Dominica, Grenada, Malaysia, Malta, Panama, Qatar, Saint Kitts and Nevis, Saint Lucia, the Seychelles, the Turks and Caicos Islands, the United Arab Emirates and Vanuatu.

The OECD's reason for disapproving of the above jurisdictions is the access that they grant to low rates of personal tax on income from foreign financial assets and the fact that their programmes do not require their new citizens/residents to spend a significant amount of time on their soil. Some jurisdictions have pleased the OECD by promising that they will exchange information about users of CBI/RBI schemes 'spontaneously' with all their original jurisdictions of tax residence, which ought to reduce the attractiveness of CBI/RBI schemes as vehicles for avoiding the gaze of the CRS.

The OECD says that "financial institutions are required" to take account of its analysis. Section VII of the CRS says that a financial institution may not rely on a self-certification or documentary evidence if it has reason to know that these things are unreliable. The OECD claims that every institution has "reason to know" this about any CBI/RBI schemes that it has denounced.

### Legitimacy and illegitimacy

"Citizenship by Investment" (CBI) and "Residence by Investment" (RBI) schemes allow foreigners to obtain citizenship or temporary or permanent residence rights on the basis of local investments or against a flat fee. The OECD thinks it 'legitimate' for people to be interested in these schemes because they wish to start new businesses in the jurisdictions, or because they want to travel visa-free to various countries that accept the passports they obtain, or because they want better education and job opportunities for their offspring, or the right to live in politically stable countries.

Without going into much detail, the OECD says that abuse of the CRS may occur "where an individual does not actually or not only reside in the CBI/RBI jurisdiction, but claims to be resident for tax purposes only in such jurisdiction and provides his Financial Institution with supporting documentation issued under the CBI/RBI scheme, for example a certificate of residence, ID card or passport."

### Examples of risk

In its consultative document in February the OECD goes into more detail, describing a particular type of scam that it has detected in which a new account–holder makes false statements about his tax residency and provides a tax residence certificate in support. In this example, X is an individual resident in jurisdiction F. In order to circumvent reporting under the CRS, he applies for 'residency status' in jurisdiction M under its RBI programme. This status requires X to buy a property in jurisdiction M worth at least €500,000 or to rent a property for a minimum of €40,000 per annum. It allows X to obtain tax residency in jurisdiction M without being taxed on any income that is not obtained in or remitted to jurisdiction M. X opens a new account at Bank B in jurisdiction B and certifies that he is resident for tax purposes in country M (also presenting his tax residency certificate to Bank B during the 'on-boarding' process. Although the CRS requires X to include all jurisdictions of residence for tax purposes in his self-certification, he omits to mention his tax residence in jurisdiction F. In addition, the AML/KYC documents he provides do not show any connection to jurisdiction F.

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

The OECD's paper states that there is a particularly high level of risk if the scheme in question imposes limited requirements for the person to be physically present in the jurisdiction or if there are no checks to see that he is. It is also a sign of risk if the scheme is offered by either: (i) low/no tax jurisdictions; (ii) jurisdictions exempting foreign source income; (iii) jurisdictions with a special tax regime for foreigners who have obtained residence through such schemes; and/or (iv) jurisdictions not receiving CRS information. Further problems might come from the absence of other mitigating factors, such as the 'spontaneous' exchanges mentioned above, or an indication on certificates of tax residence that the residence was obtained through a CBI/RBI scheme.

### The CRS loophole strategy

*Offshore Red* asked Bruno L'ecuyer, the head of the Investment Migration Council, what his trade body's attitude to the initiative was and why there were still 'loopholes,' as the OECD calls them, in the CRS. He explained: "There has been so much new legislation and there have been so many compliance issues to cope with since the financial crisis. It's been hard for governments to keep up with the changes. Which is healthy as they're catching up and they've identified it."

The OECD is wary of programmes in countries that do not require an individual to spend a significant amount of time (less than 90 days is its figure) on their territory. When asked whether he thought that there were many legitimate businessmen who spent little time in any one country, he agreed: "That is right. Globalisation is happening and it's very easy to get around the world now – not just for HNWs but also for business people."

### Enter the IMC

He explained the job of the IMC: "We're professionalising the association. We have 375 members in 45 countries and we're quite pleased with the organic growth. We have a dialogue with the likes of the OECD and the European Commission, although not the Financial Action Task Force. We're trying to homogenise due diligence standards.

"The industry needs a strong association to act as a bridge between countries and the OECD"

"All the CBI agencies running the programmes are friendly towards us and very approachable. We have a good relationship with the Ministry of Finance in Cyprus (there is no separate agency there), Greece, and the five countries in the Caribbean that do it. All five are members of the IMC now. The industry needs a strong association to act as a bridge between countries and the OECD. A lot of units are run by small teams. It is very difficult to find people to work on those teams – they need experienced staff members. We're looking at education and training programmes.

"The history of citizenship-by-investment goes back to the Roman and British Empires. Both were built on fostering good relations with foreign businessmen. In return for investment in the UK, the British Empire gave British nationality to Indians. The modern incarnation started in the mid-1980s (1984) with St Kitts. It did wonders for their economy but nobody else seemed to notice it as a money-spinner.

That all changed with the financial crisis of 2008, when governments were screaming for money and new ways of attracting business. Cyprus did it and a little later Malta (2013-14) did it within the EU.

"The UK has been doing it for ages. It now calls its operation the Tier 1 Investor Visa Programme. The French and Portuguese have golden visas – after 5-10 years, you can acquire citizenship. We have members from Spain, the UK, Cyprus, Malta and one or two from France."

Much of the OECD's campaign against the offshore countries that offer CBI/RBI programmes hinges on its assertion that abuse of 'golden visas' is more likely in low-tax jurisdictions than elsewhere. When asked whether he knew of any evidence for that assertion, l'Ecuyer replied: "No, I don't."

### The never-ending campaign

*Offshore Red* asked Till Neumann, the managing partner at Citizen Lane, a Swiss-based citizenship-and-residence-planning firm that caters for HNW individuals, whether he thought that the OECD's initiative was a fresh campaign against low-tax-jurisdictions by the back door.

His reply was unequivocal: "It's a campaign that never stops and it will never stop. I've been contacted by so many clients, especially from Germany, who have now moved abroad to save taxes. They go to Switzerland, which is not a zero-tax jurisdiction but tax is proportionately lower there. When you put taxes up, you just pressure the rich people out. They flee because they can afford to flee, so poor people suffer from that policy. I think that eventually there will be a massive tax cut in all the European states.

"All these tax-haven Caribbean countries (which are the most important, maybe) don't really benefit much from their new high-net-worth residents because they don't bring in that much money. They send their children to universities in the USA. They do a little construction, they go to the restaurants, some of them have yachts there and sail them out of the marinas, so they do bring some benefit to the country in question, but not too much."

Neumann was of the opinion that the OECD's initiatives, including the CRS, were a case of tinkering at the edges of the problem of international tax avoidance: "It sounds a little crazy, but I think that at some point there will have to be an agreement between all the countries in the world to levy a minimum tax. This is because taxes can be evaded in many ways. The top millionth of the population effectively don't pay taxes at all. If they had to pay a minimum tax of perhaps 5-10% wherever they were, I think that the offshore and onshore jurisdictions would actually benefit from that."

### The appeal of the programmes

When asked about the different attractions of citizenship by investment and residency by investment, Neumann explained: "Most of the citizenship clients whom I see are Russian, Chinese etc. and they live in their home countries.

Just a small number use CBI programmes to make it easy for tax purposes. They just want to travel, or in some cases to relocate to Europe. Citizenship-by-investment has no bearing on tax. Most of the CBI programmes are Caribbean ones and the people who opt for them want to travel. They can travel to roughly 120-130 countries visa-free. The US and many other countries give them a 1-5-year visa instead of a single-entry visa.

"Residency is not a tax issue, it is simply about where you become resident"

"Residency programmes are not a tax issue *per se*. It is simply about where you become resident. The vast majority (perhaps 80-90%) of people who opt for residency-by-investment do so because they like the country, or because it is a safer and freer place to live. The people who want this are Chinese, Russian, South American...even Americans who want to come to Europe.

It's a tool for wealthy people who want to migrate from another country. You don't get the same travel rights under residency-by-investment, although you do with a Schengen residency.

The Schengen Area contains 26 European states (leaving out the British Isles) that have officially abolished passport and all other types of systematic border control at their mutual borders.

Cyprus (with its Turkish border problem in the north) has not yet joined, so if you have a residency permit for Cyprus you can only stay in Cyprus and cannot go to the other EU countries. If you live in Cyprus, that helps you gain tax residency there. ■