

# Scope of new OECD rules on abuse of residence & citizenship programmes circumventing CRS

- > OECD preventing abuse of residence & citizenship by investment scheme
- > Why has OECD targeted Hong Kong?
- > Impact on actual and future residents in Hong Kong
- > Consequences for promoters and service providers of residence schemes?

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interacting with OECD on Rbl,  
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### Schedule

13.30-14.00 Registration  
14.00 Beginning of seminar  
15.30 Coffee break  
17.30 End of seminar

### The OECD initiative in context

- Why OECD addressing loopholes before full implementation of CRS?
- Why OECD considers Rbl & Cbl has inordinate risk of abuse for circumventing CRS?
- Can jurisdictions decide to not implement these additional anti CRS avoidance measures?
- OECD high-risk hallmarks of Rbl & Cbl abuse
- Why is there a separate initiative to address Rbl / Cbl if already covered by the MDR?
- Which Asian countries Rbl schemes are the primary target for the OECD?

### How OECD addresses Cbl / Rbl schemes

- What are the hallmarks of avoidance arrangements for Rbl / Cbl?
- Who are reporting intermediaries?
- When must lawyers with confidential privilege report?
- What are the triggers for reporting?
- What information is reported?
- When to report on actual taxpayers?
- When to report on potential clients before obtaining Rbl / Cbl?
- What are the proposed penalties for non-compliance on intermediaries? On clients?
- Who reports retroactively on clients since 29 October 2014?

### How stakeholders other than FIs and intermediaries will to be obliged address the risks:

- Jurisdiction tax authority interaction with previous tax residence
- How does the Convention Mutual Assistance in tax matters apply here?
- What if Rbl jurisdiction has not signed the Convention?

### How must FIs enhance due diligence

- When to determine other tax residences if since October 2014 customer presents Cbl / Rbl identity plus utility bill plus tax or / and residence certificate?
- Discovering indicia of multiple residences using the OECD Model Tax Convention, namely (i) Permanent home, (ii) Centre of Vital Interest (iii) Habitual Abode (iv) Other indicia

- When is a house / apartment / hotel / Room a Permanent Home
- Vital Centre of Interest: What are social relations vs. economic relations? Which take priority?
- Is twice yearly visit or declaring «not being elsewhere for more than 183 days» regarded as tax-residence?
- Must FI utilise Double Taxation Agreement tie breakers to determine a single tax residencies?
- What are the ways clients can prove they are not resident elsewhere?
- What if client cannot prove he is not tax resident elsewhere?

### Hurdles to implementing

- Ambiguous bright-line rules
- Invoking legal privileged confidentiality and individual protection from self-incrimination
- Illegal to impose retroactive reporting and penalties for non-compliance
- Unlikely extraterritorial projection
- Can penalties be applied for non-compliance if jurisdiction prohibit retroactive legislation?
- Can courts hear on the case if no prescriptive and adjudicative laws?
- Impact of residency on forced heirship rules

### Which avoidance is strongly or weakly covered?

- Under what conditions will Rbl / Cbl not be addressed?

### Practical application

#### Which jurisdictions are impacted?

- Criteria assessment of the 72 jurisdictions offering schemes
- Ranking of Rbl / Cbl for risk of abuse: Highest priority targets<sup>1</sup>, very High Risk<sup>2</sup>, High risk<sup>3</sup>, Watch list<sup>4</sup>, Whitelist<sup>5</sup>

#### Impact of initiative on jurisdictions

- How are the Rbl / Cbl jurisdictions likely to react to the OECD initiative: which jurisdictions are closest to changes of rules to their CBI/RBI regime?

### Impact of initiative on promoters/service providers

- Which professionals are concerned: tax consultants, lawyers, accountants, corporate service providers and trust companies, corporate directors, banks, life insurance companies, compliance, fund administrators?
- What is their risk exposure for having sold the RBI/CBI schemes before 2014 vs. since 2014?
- What do the promoters/ service providers have to do: informing their clients, reporting to tax authorities, informing upstream and downstream intermediaries, inform the financial institutions (bank...)?
- Legal and practical issues for promoters/service providers schemes for:
  - Highest priority targets like UAE, Malta, Cyprus, Greece, Portugal
  - High risk jurisdictions like Monaco, etc.
  - Watch list jurisdictions like Hong Kong, Singapore, Thailand, etc.
  - White list jurisdictions like Switzerland, UK, Belgium, etc.

### Impact of initiative on clients

- What can the clients do legally to avoid disclosure? Move to low-risk Rbl?
- How clients likely to react to OECD initiative: will staying 183 days from time rules are effective be solution?
- If obtaining tax clearance certificates from previous residences, how far back?
- What if they renounce their CBI/RBI status before rules effective: are they going to be disclosed? Do they have to report/ prove that they have given up their CBI/RBI status?

### Rbl/Cbl vs. BEPS MDR v.s EU MDR vs UK POTAS

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

**Lists:** 1: UAE, Cyprus, Malta, St. Kitts, St. Lucia, Dominica, Antigua, Grenada; 2: Portugal, Greece...; 3: Thailand, Andorra, Gibraltar, Channel Islands, Monaco, Cayman, Bahamas, Turks & Caicos, Montserrat...; 4: Singapore, Costa Rica, Ecuador, Guatemala, Nicaragua, Brazil, St. Maarten, Barbados, Panama, Hong Kong, Philippines, Malaysia, Seychelles, Mauritius, Vanuatu...; 5: Switzerland, Austria, Australia, New Zealand, Estonia, Latvia, Lithuania, Spain, Czech, Belgium, Isle of Man, Brazil, UK...

## PRACTICAL INFORMATION

### Venue

Cliftons Hong Kong  
Level 5, Hutchison House, 10 Harcourt Road,  
Central, Hong Kong

### How to register

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T: +852 3757 5535 (HK Office)  
Academy & Finance (HK) Ltd  
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## REGISTRATION FORM

I register for the seminar «Scope of new OECD rules on abuse of residence & citizenship programmes circumventing CRS» in Hong Kong on wednesday 3 October 2018.

### FIRST PARTICIPANT

Full name.....

Position.....

E-mail.....

### SECOND PARTICIPANT (-50%)

Full name.....

Position.....

E-mail.....

Company.....

Address.....

Postcode..... City.....

Tel ..... Fax.....

Bank transfer  Mastercard  VISA  AMEX

Credit card No : \_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_ Expiry date : \_\_\_\_/\_\_\_\_

Cardholder.....

Address of AMEX cardholder .....

Date ..... Signature.....