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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.