



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.

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