

Your own Polar Bear Custodian In Svalbard



by Mark Morris



Presentation agenda

- a) Common CRS misinterpretations
- b) Polar bear structure
- c) Trust can be a Custodial Institution for AEoI
- d) Resettle/decant polar bear custodian to new trust/foundation
- e) Structure to resolve Liechtenstein's Russian zombie trust crisis
- f) Territories and dependencies excluded from Norway's tax agreements
- g) Alternate non-participating jurisdictions
- h) Liechtenstein rejects Mandatory Disclosure Rules

a). Common AEoI misinterpretations

ACADEMY & FINANCE

Advanced training: CRS / FATCA misinterpretations and imminent CARF / CRS 2.0

> Implementation Handbook, FAQ & Guidelines are unhelpful for certain ambiguities
> If you know CRS, you might think you know CARF, but essential concepts will differ, as will the consequences



Mark Morris, CRS expert, Zurich



Paul Foster Millen, Millen Tax & Legal, Zurich

- 9.00 Tracing the source of AEoI misunderstandings
 - Implementation handbook is the source of most ambiguities
 - Which entity categorizations affected by «cash is not a financial asset»
 - Active NFE loopholes
- Trusts, underlying companies, foundations
- 9.30 Treatment of trusts and underlying companies
 - Complexities of trusts and underlying companies
 - Why trustee and custodian fees be paid to unrelated third parties: why some jurisdictions are wrong
 - Describing the SPV Custodian mentioned in the FAQ
 - What if co-ownership settlors and trustees are the same people? Beneficiaries as well?
 - Where a foundation differs from trusts for AEoI
- Significant CRS and FATCA amendments
- 10.00 CRS and FATCA amendments since initial implementation
 - The loopholes OECD CRS-related FAQs attempted to tackle. Why it often fails, e.g. high risk Rbl/Cbl.
 - Why SIF wrongly obliges FI trusts to look-through non-reportable equity interests
 - Which FATCA issues are being updated: E.g. Rev-Proc 2024-42 reciprocal reporting
- Tax residence
- 10.30 Tax residence is a major flaw of CRS and CARF
 - Why Rbl and Cbl continue to evade CRS and CARF despite OECD update
 - Resolving reporting of dual resident companies
 - Should the OECD Model Tax Convention Tie Breaker Rules determine residence of untaxed entities
 - Municipality issued utility bill sufficient proof of residence
 - The misunderstanding of residence of untaxed NFEs versus untaxed Investment Entities
 - Does 183+ days determine sole tax residency
- 11.00 Coffee break
- Crypto Asset Reporting Framework (CARF)
- 11.20 OECD's CARF and other digital asset/crypto currency reporting regimes
 - CARF is not CRS 2.0
 - What is CARF?
 - What are the similarities with CRS?
- Ultimate aims
 - Structure/methodology
 - Due diligence techniques
 - Reportable Information
 - Client notifications
 - What are the dissimilarities with CRS?
 - Reporting parties
 - Transactions, not accounts
 - Look-through treatments
 - Jurisdictional nexuses
 - CARF in Switzerland
 - Related regimes (DAC8, US crypto broker regs)
 - Status of jurisdictions pledging to join CARF
 - Timelines and obstacles
- 12.30 Lunch
- 14.00 Where jurisdiction CRS guidelines and seasoned practitioners often misinterpret/misunderstand
 - Custodial Institution attributed income-connection test is wrong.
 - Where authorities mistake on beneficial owners of listed companies
 - The consequence of any jurisdiction utilizing MCAA's article 29 to exclude territories?
 - Does a corporate director pass one of the tests of a managed Investment Entity?
 - Is a director a Controlling Person of a FI. And NFE?
 - Can an Active NFE be recategorized a Passive NFE even if doesn't change its activities
 - What tricks used to categorize a Personal ETF as a regularly trades?
 - Active NFE holding loophole
- Reporting obligations
- 14.30 Misunderstood reporting obligations
 - Where an entity will be a CRS FI but not a FATCA FFI
 - Any solution regarding the eShell Bank Loopholes identified by the US Senate Finance Committee.
 - Amount reportable for settlors of irrevocable trusts who are not a beneficiary (Cyprus, LI, Singapore...)
 - How much reported for Zero Cash Value PPLI. Other so-called non-cash value insurance, e.g. captives.
 - Option to report on Controlling Persons resident in same jurisdiction as FI
 - OECD misunderstands how non-reporting pension evade CRS
 - Unanswered consequences of ID Controlling Persons of Passive NFEs regardless status of parent chain.
 - Inconsistencies in reporting between trusts
 - When must a non-reporting FI report



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Analyses and tax policies
The Director

02.07.2009

Brussels,
Taxud E2 GM/dvl Ares(2009)174492

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Subject : Consultations in the framework of the Commission proposal to amend the Savings taxation directive

Dear Mr Morris,

I am aware that, since the early summer of 2005, there have been regular contacts between you and the team within my Directorate dealing with Directive 2003/48/EC (the "Savings taxation directive").

I acknowledge the appreciation given to your reflections by the members of that team, notably by Germano Mirabile who heads the relevant sector of activity.

In the light of the quality of your submissions and of your proven deep knowledge of the issues relating to the management of private financial assets, my Directorate had the pleasure to invite you, as an expert in the field, to a meeting on our premises in February 2007 for discussions on the operation of the Savings taxation directive. The technical contribution given by you on that occasion was highly relevant in enabling a fruitful start to the works of the Expert group on savings taxation whose first meeting took place some weeks later.

I myself have noted the quality of your analysis relating to the characteristics of specific financial and insurance products and to the legal framework of international financial centres. I am grateful for the exchanges of views which have taken place with Germano Mirabile and his team in this respect which have been of assistance to the team within the framework of the first review of the directive.

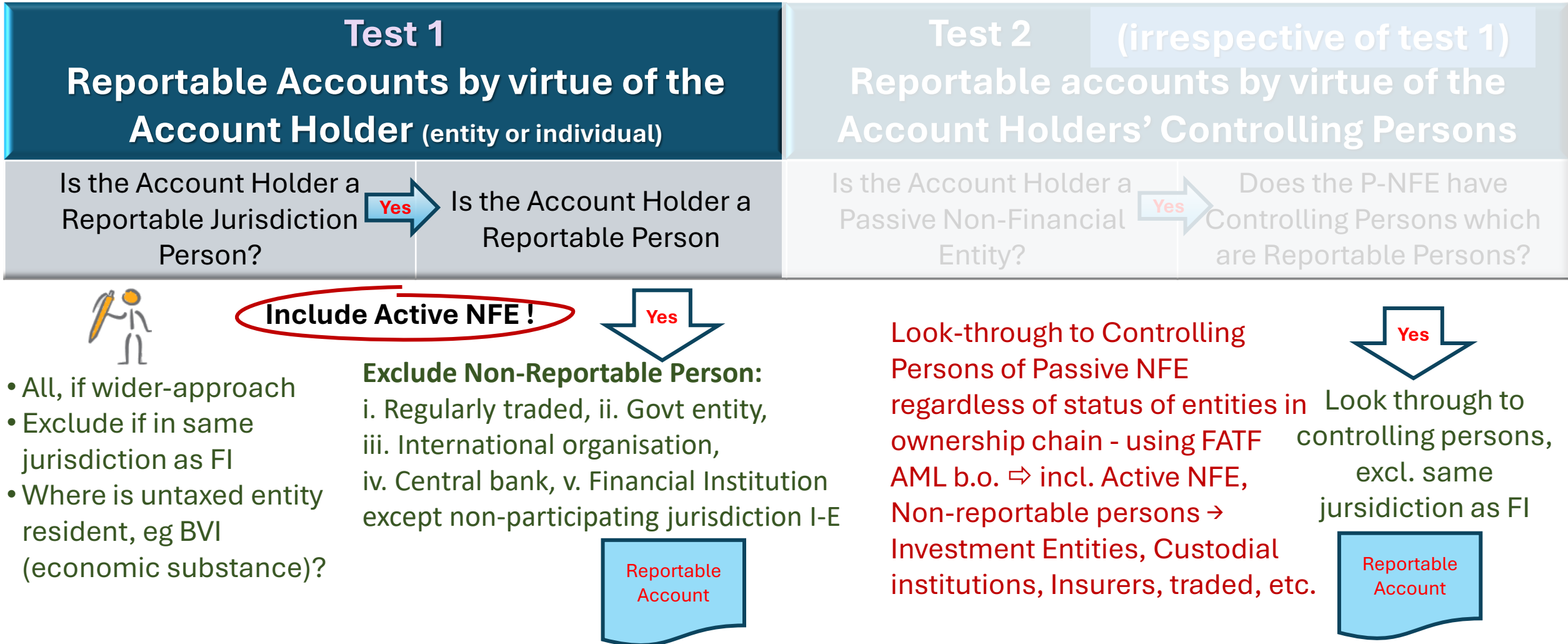
I have no objection to your sharing this appreciation of your contribution and technical skills with people to whom it might be of concern.

Yours sincerely

Philip Kermode

a). Common AEoI misinterpretations

Identify Reportable Accounts



a). Common CRS misinterpretations

SPV Custodian fees may be paid to unrelated 3rd parties



CRS-related Frequently Asked Questions

(February 2019)

SECTION VIII: DEFINITIONS

A. REPORTING FINANCIAL INSTITUTIONS

9. Treatment of corporate trustees and SPV custodians

In certain instances, a professional accounting or law firm sets up a trust for a client and, as part of that process, appoints a corporate trustee. The client then pays the accounting or law firm for all services rendered in relation to the set-up of the trust, including the appointment of the corporate trustee and other trustee services. As such, the corporate trustee itself does not receive a direct remuneration for its services as these are paid to the accounting or law firm as part of the overall package.

In that light, for purposes of the gross income tests to be applied in the context of the definitions of Investment Entity and Custodial Institution, is it required that the remuneration for the relevant activities carried out is paid to the Entity to which the test is applied?

* No. For the purposes of the gross income tests to be applied in the context of the definitions of Investment Entity and Custodial Institution all remuneration for the relevant activities of an Entity is to be taken into account, independent of whether that remuneration is paid directly to the Entity to which the test is applied or to another Entity. This issue can also arise in the context of Entities that provide custodial services if the fees for such services are paid to another Entity.

SPV Custodian

- A Special Purpose Vehicle is usually a subsidiary company (but not required to be owned by the company) on whose behalf the entity is created.
- It is a legal entity or **legal arrangement** created for a specific purpose, usually a single project, which isolates the risk of the underlying assets from the sponsor's balance sheet.

* **Custodial fees can be paid to unrelated third parties, eg. accountant, law firm helps set up the custodian**

a). Common AEOI misinterpretations

CRS FI need not be regulated

- ❖ The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company

- ❖ Whether an Entity is subject to financial laws and regulations of a Participating Jurisdiction or is subject to supervision and examination by agencies having regulatory oversight of Financial Institutions, is relevant to, but not necessarily determinative of, whether that Entity qualifies as a Financial Institution

- ❖ Only Canada requires CRS FIs to be regulated
 - Netherlands and Luxembourg dropped this requirement upon pressure from OECD

a). Common AEol misinterpretation

Election for Non-Corporate Entities as parent in EAG for FATCA

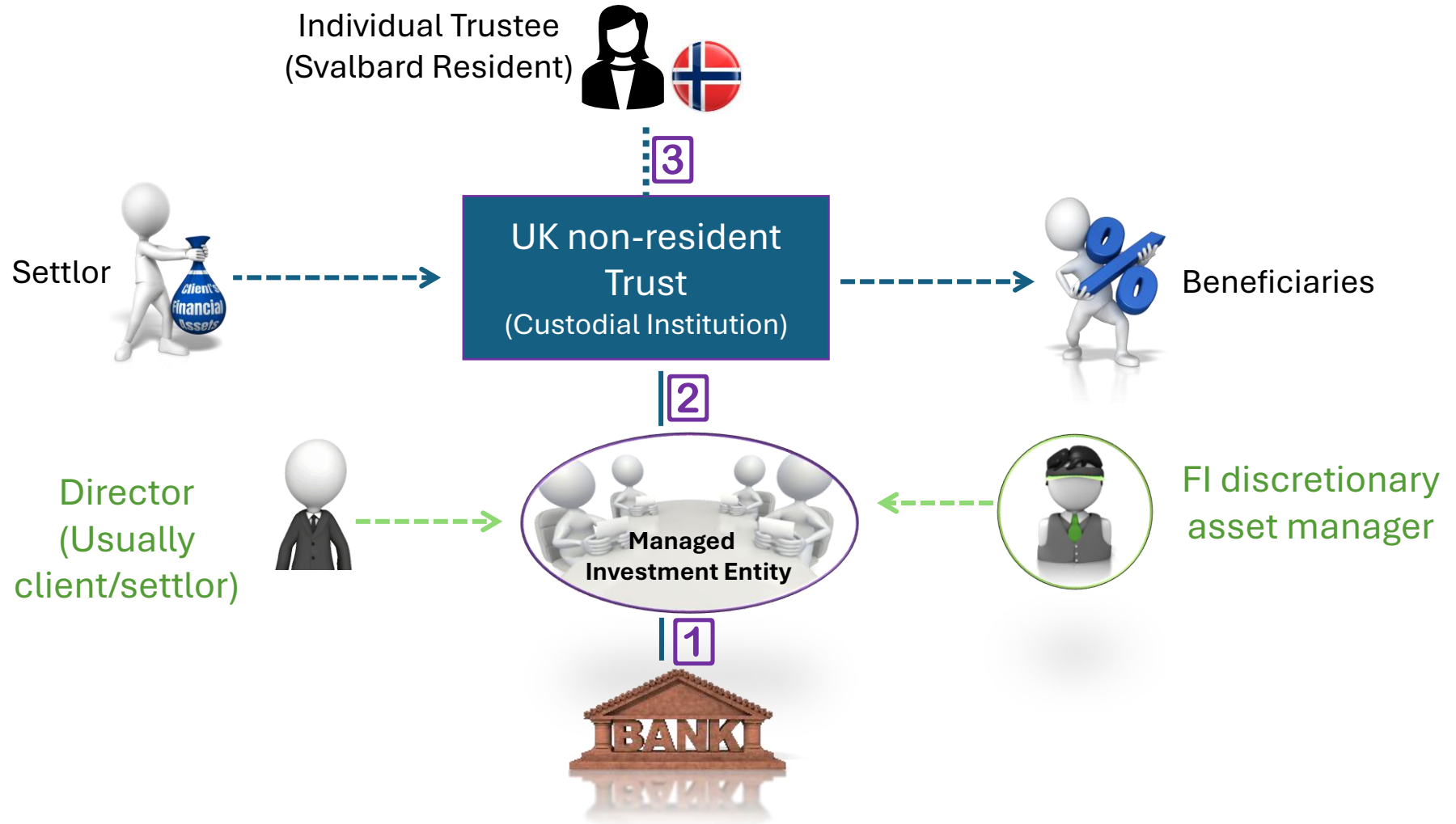
- For US taxes 80% ownership or under common ownership, for FATCA reduced to 50% for FFIs
- FFIs that are part of an EAG must ensure all members comply with FATCA, where a "Lead FI" manages the registration process for the entire group, streamlining compliance Anti-Inversion Rules moving US company's headquarters to a foreign country to reduce US taxes
- One rotten apple spoils the barrel - if one member of an EAG is a non-participating FFI, then all members of EAG are non-participating FFIs (30% penalty withholding)
- Registering the trust and underlying entity as an EAG depends on a formal election for non-corporate entities
- Only a corporation can automatically be treated as the common parent of an EAG.
 - Non-corporations (trust or partnerships) - would not automatically be an EAG as parent
 - However, the regulations provide an election that changes this treatment



Election for non-corporate entities as parent in EAG:

- ❖ IRS regulations state that an entity other than a corporation may **elect** to be treated as the common parent entity for determining the composition of an EAG
- ❖ This indicates that your SPV Custodial Institution trust is not part of an EAG but is if optional formal election made.
- ❖ Authoritative source for this rule and election is 26 CFR § 1.1471-5(i)(10)

b). Polar bear structure



? Potential Points of AEOI reporting

b). Polar bear structure

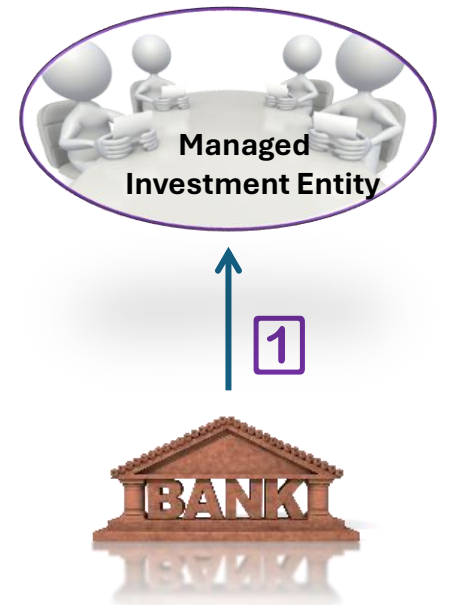
1 Nil reporting by FI (bank) maintaining financial assets of an FI Investment Entity

Reportable Person means a Reportable Jurisdiction Person **other** than an entity

- i). Regularly traded, ii). Govt entity, iii). International organisation, iv). Central bank,
v). Financial Institution except non-participating jurisdiction investment entity:

Financial Institutions are:

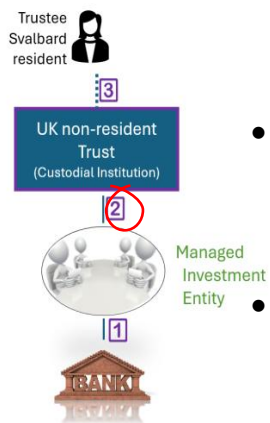
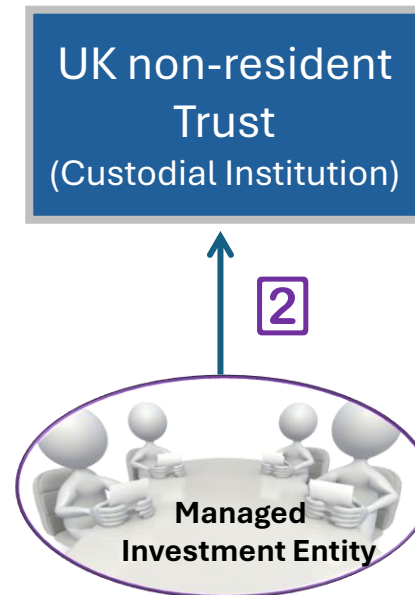
- Custodial Institution
- Depository Institution
- Specified Insurance Company
- **Professionally Managed Investment Entity**
 - Income test: > 50% passive income, and
 - Asset management test : Mix of FI discretionary basis and individuals
 - No asset test (only for Active NFE type A)



b). Polar Bear structure

2 Nil report (or no reportable persons) by Investment Entity if its Equity Interest held through a Custodial Institution

- The equity interest in the Investment Entity is exclusively the FI Custodial Institution trust (or trustee on behalf of trust)
- CRS excludes Financial Institutions (incl custodial institutions) from the definition of Reportable Person
- **CRS Commentary page 178 par 69-71:** Where Equity Interests of an Investment Entity are held through a Custodial Institution, the Custodial Institution is responsible for reporting, **not** the Investment Entity.
- There is no “look-through” by the Investment Entity of a non-participating Custodial Institution FI
- US Senate Finance Committee report on “Shell bank loophole”



b). Polar bear structure

3 No AEOI reporting obligation by non-participating Custodial Institution

CRS

- Non-participating jurisdiction Custodial Institution has no reporting obligations



Trustee
Svalbard
resident

3

Non-UK Trust
(Custodial Institution)

FATCA

- Non-participating FFI has no reporting obligations if does not receive US source income
- No 30% withholding penalty
- No recalcitrant reporting
- Not part of an EAG

Trustee
Svalbard
resident



3

UK non-resident
Trust
(Custodial Institution)

2

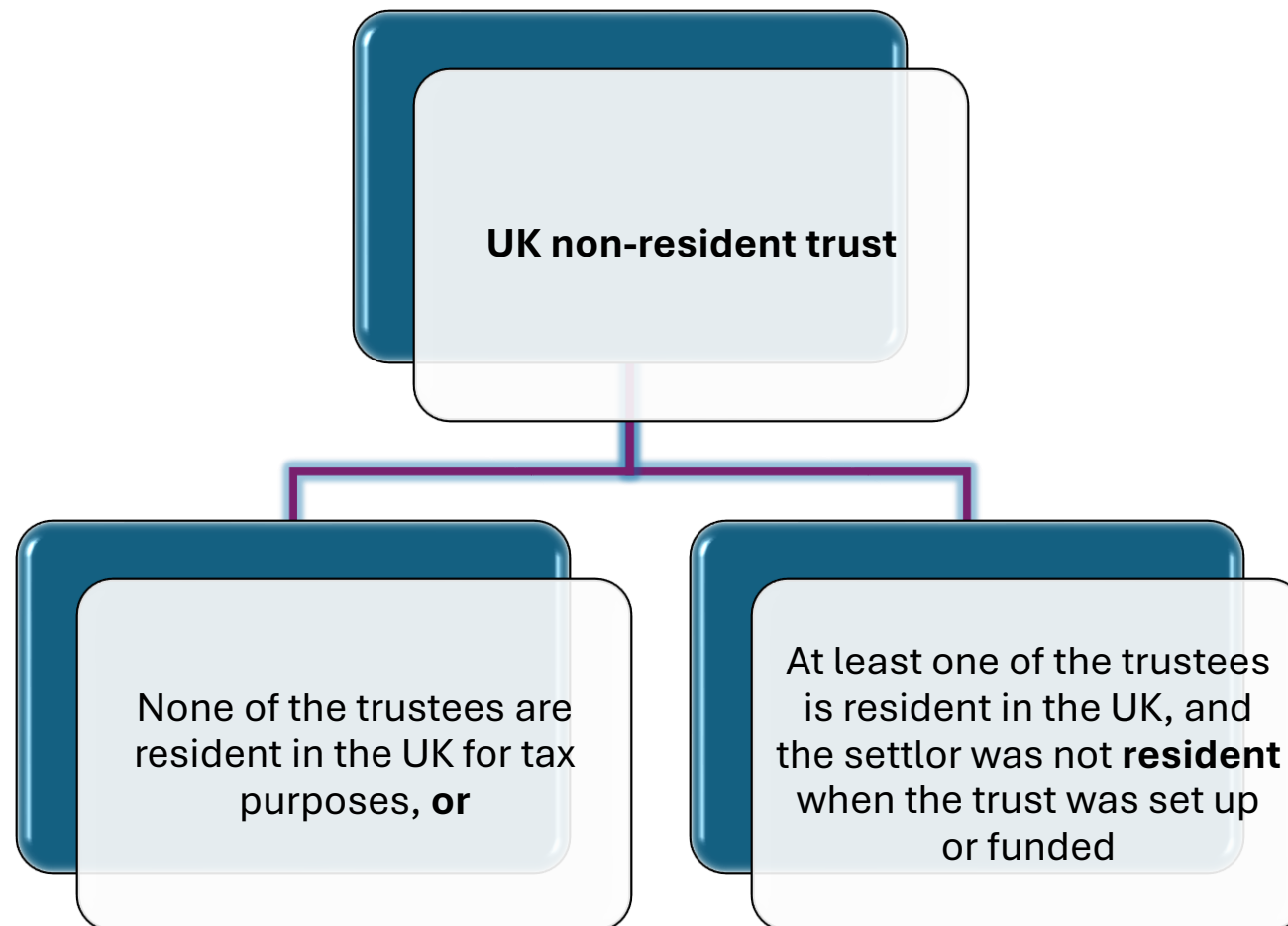


Managed
Investment
Entity

1



b). Polar bear structure

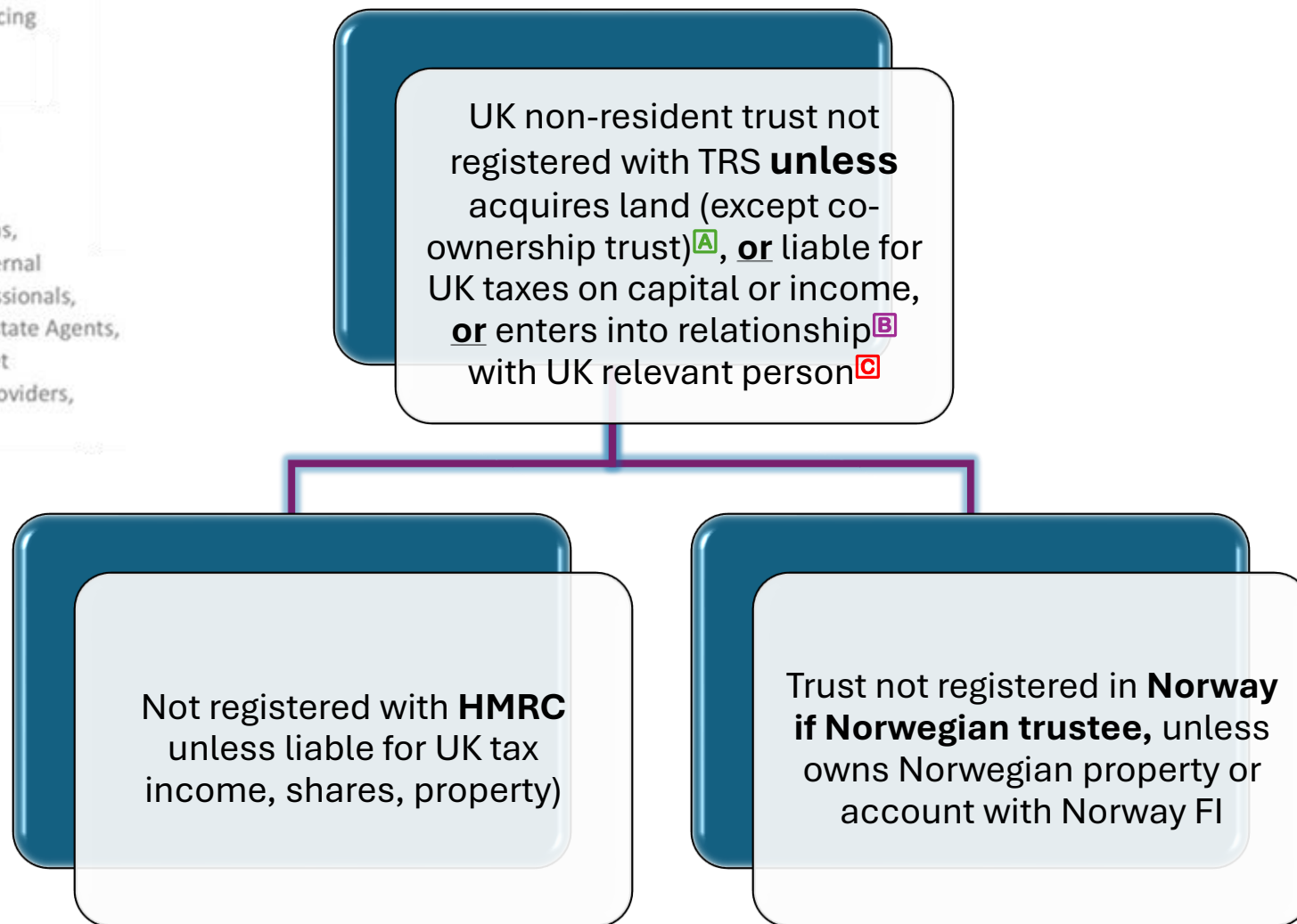


b). Polar bear structure

A Money Laundering and Terrorist Financing (Amendment) Regulation 2020 Part II Beneficial Ownership.

B Business, professional, or commercial relationship.

C Financial Institutions, Credit institutions, Auditors, Insolvency Practitioners, External Accountants, Tax Advisers, Legal Professionals, Trust or Company Service Providers, Estate Agents, High Value Dealers, Casinos, Art Market Participators, Cryptoasset Exchange Providers, Custodian Wallet Providers.



c). Trust can be a Custodial Institution for AEoI

- The term “Financial Institution” means a **Custodial Institution**, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
- HMRC **IEIM400700** confirms that a trust can be a Custodial Institution. A trust can be either a financial institution or a Non-Financial Entity. Where a trust meets one of the definitions for being a Financial Institution it is most likely to be an Investment Entity, but it may, alternatively meet the requirements for being a Custodial Institution.
- Whether an Entity is subject to financial laws and regulations of a Participating Jurisdiction or is subject to supervision and examination by agencies having regulatory oversight of Financial Institutions, is relevant to, but not necessarily determinative of, whether that Entity qualifies as a Financial Institution.

c). Trust can be a Custodial Institution for AEoI

A trust is a Custodial Institution for CRS/FATCA if:

- i. It is an entity
- ii. Holds **Financial Assets** on behalf of others (for beneficiaries)
- iii. Earns at least 20% of its income from holding financial assets and providing related financial services

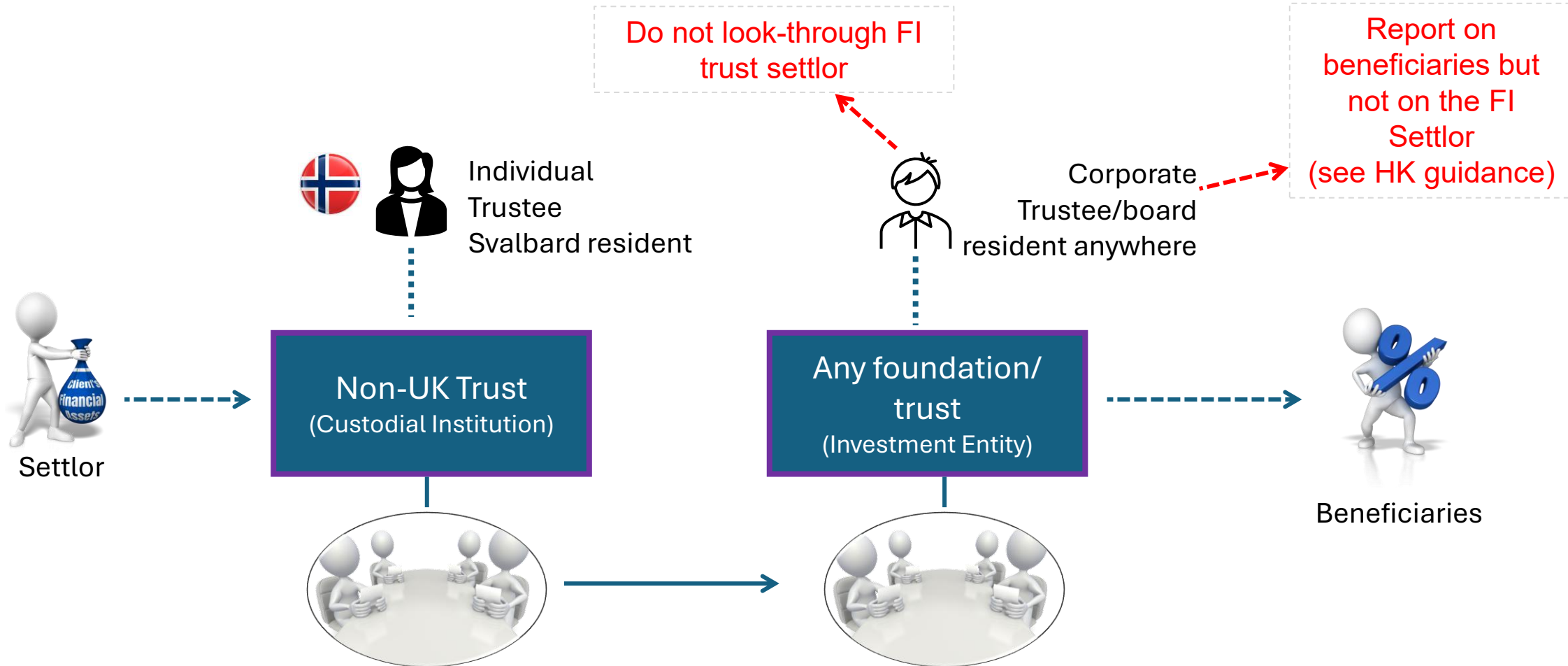
Custody fees CRS Section VIII.A4

The following types of income attributable to holding financial assets and providing related financial services:

- i. Custody, account maintenance and transfer fees
- ii. Commissions and fees earned from executing and pricing securities transactions
- iii. Income earned from extending credit to customers
- iv. Income earned from contracts for differences and as the bid-ask spread of financial assets
- v. **Fees for providing financial advice with respect to Financial Assets held in (or potentially to be held in) custody by the entity**
- vi. Fees for providing clearance and settlement services

d). Resettle/decant polar bear custodian to new trust/foundation

Settlor is a non-reportable FI



d). Resettle/decant polar bear custodian to new trust/foundation

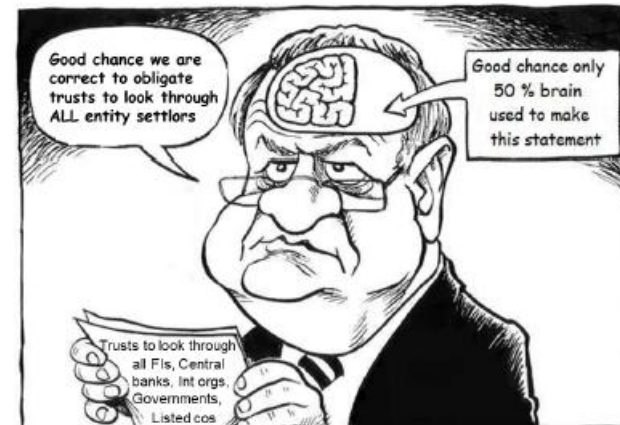
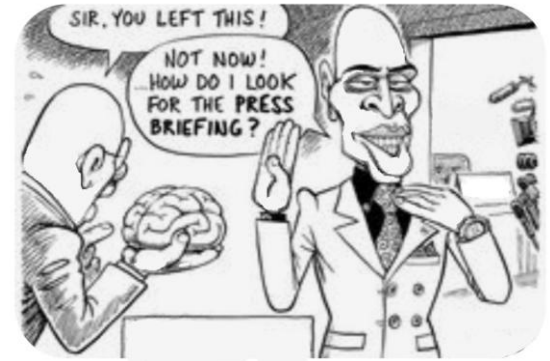
Incorrect CRS guidelines for trusts to look through FI controlling persons

The OECD CRS FAQ says when looking through a Passive NFE, look through all parent entities for the controlling persons, irrespective of the status of entities in the chain of parents. Those making an erroneous opinion that the new trust must look through the old CI, even though it's a Reporting FI, get mixed up with the look through of Passive NFEs

As such, a trust is required to look through a settlor, trustee, protector or beneficiary that is an entity to locate the relevant controlling persons.

This basically equates to treating the FI-equity interest holders of an FI-trust as passive non-financial entities rather than as true FIs.

As per the contents of the Implementation Handbook, the FI status of an entity does not therefore serve as a "blocker" when it comes to FI-trusts' reporting obligations.



d). Resettle/decant polar bear custodian to new trust/foundation

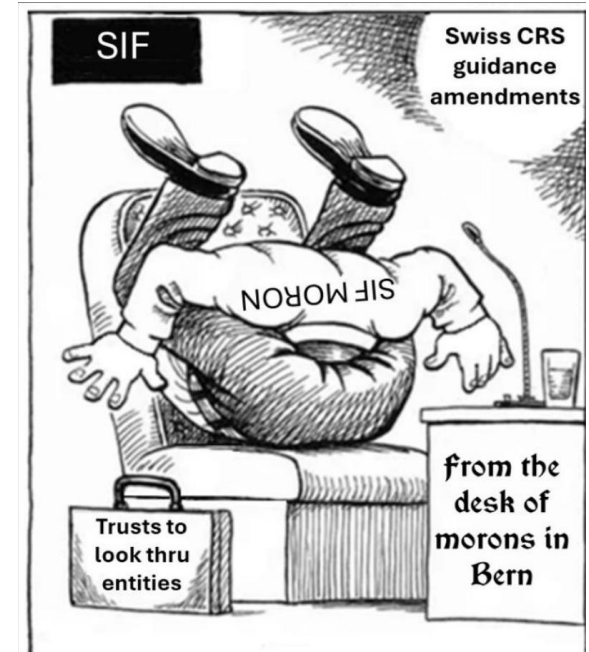
Incorrect CRS guidelines for trusts to look through all entities including FI

CRS Implementation handbook pg. 109

254. The debt and Equity Interests of the trust are Reportable Accounts if they are held by a Reportable Person. For example, if a settlor or beneficiary is resident in a Reportable Jurisdiction, their Equity Interest is a Reportable Account.

256. Where an Equity Interest (such as the interest held by a settlor, beneficiary or any other natural person exercising ultimate effective control over the trust) is held by an Entity, the Equity Interest holder will instead be the Controlling Persons of that Entity. As such, the trust will be required to look through a settlor, trustee, protector or beneficiary that is an Entity to locate

Doesnt say this includes non-reportable entity



Currently, it is the understanding of the IRD that the term "entity" used here does not include a person excluded from the definition of reportable person. Entities that are not reportable persons include all FIs

CRS Commentary pg. 178

71. Where Equity Interests are held through a Custodial Institution, the Custodial Institution is responsible for reporting, not the Investment Entity. The following example illustrates how such reporting must be done: Reportable Person A holds shares in investment fund L. A holds the shares in custody with custodian Y. Investment fund L is an Investment Entity

d). Resettle polar bear custodian to any trust/foundation

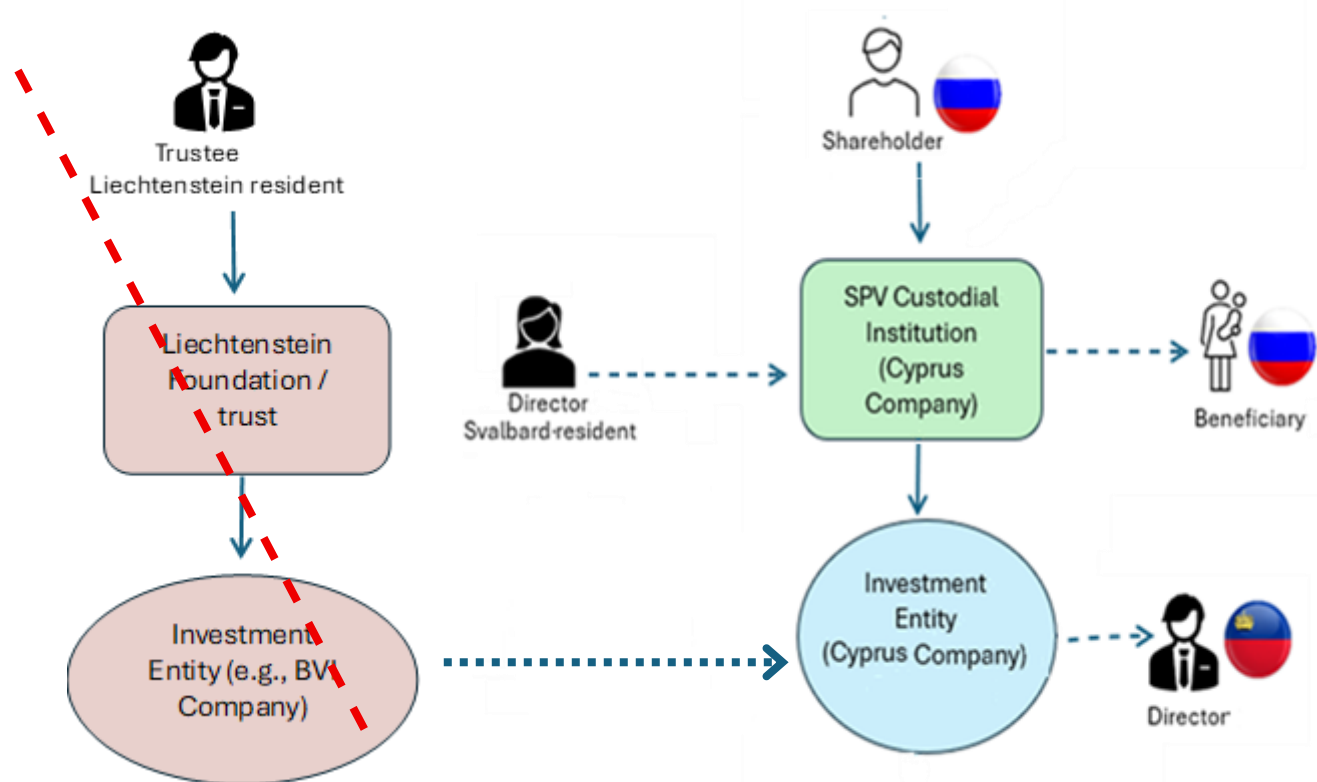
Asset protection hoax of confidentiality, statute of limitations, burden of proof, fraudulent disposition, spendthrift, ignore force heirship....



Courts target settlors with contempt of court unless repatriate assets

- Fake claim that individual cannot be jailed for failing to do something that is “impossible”.
- However, courts have ruled that if the settlor *intentionally* created the “impossibility” by transferring assets into a trust they can no longer access, the “impossible defence” may not apply.
- Particularly where the court believes the individual retains some measure of control or influence over the foreign trustee, e.g. via protector
- A judge may issue a contempt order, potentially leading to the settlor's imprisonment until they "arrange" for the assets to be repatriated.
- Assets cannot be proved to belong to a polar bear custodian settlor

e). Structure to resolve Russian zombie trust crisis



MoF issued an announcement making clarifications on the 5th package of sanctions of the European Commission against Russia, specifically addressing the recent prohibition introduced under Article 5m of Regulation (EU) 833/2014 which prohibits the provision of certain trust services.

The prohibition refers to the registration, provision of registered office, business or administrative address, as well as management services to new trusts or similar legal arrangements, which trigger the application of Article 5m

Ministry of Finance Article 5m Guidance April 12, 2022- Cyprus sanction guidelines explicitly clarifies that the term «**similar legal arrangements**» does **not extend to companies**.

The guidance makes clear that while the sanctions target trusts and similar legal arrangements, companies are treated as separate entities and are not considered trusts for these purposes.

Fiduciary services is

1. split of legal and beneficial ownership, and
2. A fiduciary bond (active decisions managing assets for beneficiaries)

A custodian is a gatekeeper, vault, primarily about safety and accurate record-keeping.

The client retains all decision-making power. The custodian is a passive, service-oriented entity.

f). Territories & dependencies excluded from Norway's tax agreements

21

- Terra nullius (nobody's land) until 1925 Treaty of Svalbard
- Recognised Norway's sovereignty
- Ratified by 48 countries



- Svalbard (“cold shores”) is an archipelago in the Arctic Ocean, integral part of the Kingdom of Norway, but not all Norwegian laws apply.
- Despite SJ being unincorporated areas not governed by own local government, neither is considered a dependency of Norway.

f). Territories & dependencies excluded from Norway's tax agreements

- Svalbard is integral part of Norway
- Norwegian civil, criminal law procedural law apply to Svalbard **unless other** provisions are made in the 1925 Svalbard treaty
- Article 8 Svalbard treaty states tax must only used for Svalbard and tax be non-discriminatory for signatories. Hence no signatory can get benefits from a tax treaty nor obtain some of its taxes
- Tax treaties co-ordinate tax policies would result in signatories having a beneficial tax rate which would violate Article 8.
- Norway's international agreements thus exclude Svalbard from :
 - ❑ Tax Treaties and Tax Information Exchange Agreements
 - ❑ Bilateral Agreements
 - ❑ OECD MCAA (legal basis for AEOI, and EoR)
 - ❑ FATCA IGAs

For the purposes of this Agreement, unless otherwise defined the term "Norway" means the Kingdom of Norway, and includes the land territory and internal waters, the territorial sea and the area beyond the territorial sea where the Kingdom of Norway, according to Norwegian legislation and in accordance with international law, may exercise her rights with respect to the seabed and subsoil and their natural resources; **the term does not comprise Svalbard**, Jan Mayen and the Norwegian dependencies ("biland").

f). Territories & dependencies excluded from Norway's tax agreements

Austria

**CONVENTION BETWEEN THE KINGDOM OF NORWAY AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL
1995**

...the term "Norway" means the Kingdom of Norway, including any area outside the territorial waters of the Kingdom of Norway where the Kingdom of Norway, according to Norwegian legislation and in accordance with international law, may exercise her rights with respect to the seabed and subsoil and their natural resources; the term does not comprise **Svalbard**, Jan Mayen and the Norwegian dependencies ("biland");

Germany

**ABKOMMEN ZWISCHEN DEM KÖNIGREICH NORWEGEN UND DER BUNDESREPUBLIK DEUTSCHLAND ZUR VERMEIDUNG DER DOPPELBESTEuerung UND ÜBER GEGENSEITIGE AMTSHILFE AUF DEM GEBIET DER STEUERN VOM EINKOMMEN UND VOM VERMÖGEN
2007**

...bedeutet der Ausdruck "Königreich Norwegen" das Königreich Norwegen einschließlich aller Gebiete außerhalb der Hoheitsgewässer des Königreichs Norwegen, in denen das Königreich Norwegen nach norwegischem Recht und in Übereinstimmung mit dem Völkerrecht seine Rechte hinsichtlich des Meeresbodens und Meeresuntergrunds sowie ihrer Naturschätze ausüben darf; der Ausdruck umfaßt nicht **Svalbard**, Jan Mayen und die abhängigen Gebiete Norwegens ("biland");

France

AVENANT A LA CONVENTION ENTRE LE GOUVERNEMENT DU ROYAUME DE NORVÈGE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE EN VUE D'ÉVITER LES DOUBLES IMPOSITIONS, DE PRÉVENIR L'ÉVASION FISCALE ET D'ÉTABLIR DES RÈGLES D'ASSISTANCE ADMINISTRATIVE RÉCIPROQUE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE (ENSEMBLE UN PROTOCOLE ET UN PROTOCOLE ADDITIONNEL), MODIFIÉE PAR L'AVENANT DU 14 NOVEMBRE 1984

ARTICLE 30

Champ d'application territorial

- La présente Convention s'applique:
 - en ce qui concerne la Norvège, au territoire du Royaume de Norvège et aux zones adjacentes aux eaux territoriales du Royaume de Norvège sur lesquelles, en conformité avec le droit international et selon sa législation, la Norvège peut exercer ses droits relatifs à l'exploitation des ressources naturelles du lit de la mer et du sous-sol marin; elle ne s'applique pas à **Svalbard (Spitzberg)** et Jan Mayen et aux dépendances norvégiennes à l'extérieur de l'Europe.

Albania	Argentina	Azerbaijan
Australia	Austria	Bangladesh
Barbados	Belgium	Benin
Bosnia Hercegovina	Brazil	Bulgaria
Cayman	Canada	Chile
China	Croatia	Cyprus
Czech republic	Denmark	Egypt
Estonia	Faroe Islands	Finland
France	Gambia	Georgia
Germany	Greece	Greenland
Hungary	Iceland	India
Indonesia	Iran	Ireland
Israel	Italy	Ivory Coast
Jamaica	Japan	Kazakhstan
Kenya	Latvia	Lithuania
Luxembourg	Macedonia	Malawi
<u>Malaysia</u>	Malta	Morocco
Mexico	Nepal	Netherlands
Neth. Antilles	New Zealand	Pakistan
Philippines	Poland	Portugal
Qatar	Romania	Russia
Senegal	Serbia	Sierra Leone
Serbia	Slovakia	Slovenia
Singapore		
South Africa	South Korea	Spain
	North Korea	
Sri Lanka	Sweden	Switzerland
		Trinidad and Tobago
Tanzania	Thailand	
		Uganda
Tunisia	Turkey	USA
Ukraine	UK	
Venezuela	Vietnam	Zambia
Zimbabwe		

f). Territories & dependencies excluded from Norway's tax agreements

No FATCA, nor 30% withholding

UNITED STATES-NORWAY
INCOME AND PROPERTY TAX CONVENTION

*Convention Signed at Oslo December 3, 1971;
Ratification Advised by the Senate of the United States of America August 11, 1972;
Ratified by the President of the United States of America August 28, 1972;
Ratified by Norway May 5, 1972;*

CHAPTER II
DEFINITIONS

ARTICLE 2
General Definitions

(1) In this Convention, unless the context otherwise requires:

- (a) (i) The term "United States" means the United States of America; and
(ii) When used in a geographical sense, the term "United States" means the States thereof and the District of Columbia; Such term also includes
 - (A) the territorial sea thereof and
 - (B) the seabed and subsoil of the submarine areas adjacent to the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.
- (b) (i) The term "Norway" means the Kingdom of Norway; and
(ii) When used in a geographical sense, the term "Norway" includes
 - (A) the territorial sea thereof and
 - (B) the seabed and subsoil of the submarine areas adjacent to the territorial sea, over which Norway exercises sovereign rights in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.

However, the term "Norway" does not include Spitzbergen (including Bear Island), Jan Mayen, and the Norwegian dependencies outside Europe.

Agreement Between the Government of the United States of America and the Government of the Kingdom of Norway to Improve International Tax Compliance and to Implement FATCA

1. For purposes of this agreement and any annexes thereto ("Agreement"), the following terms shall have the meanings set forth below:
 - a) The term "**United States**" means the United States of America, including the States thereof, and, when used in a geographical sense, means the territory of the United States of America, including inland waters, the air space, the territorial sea thereof and any maritime area beyond the territorial sea within which the United States may exercise sovereign rights or jurisdiction in accordance with international law; the term, however, does not include the U.S. Territories. Any reference to a "**State**" of the United States includes the District of Columbia.
 - b) The term "**U.S. Territory**" means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.
 - c) The term "**IRS**" means the U.S. Internal Revenue Service.
 - d) The term "**Norway**" means the Kingdom of Norway, and includes the land territory, internal waters, the territorial sea and the area beyond the territorial sea where the Kingdom of Norway, according to Norwegian legislation and in accordance with international law, may exercise her rights with respect to the seabed and subsoil and their natural resources; the term does not comprise Svalbard, Jan Mayen and the Norwegian dependencies ("biland").

f). Territories & dependencies excluded from Norway's tax agreements

25

No FATCA, nor 30% withholding

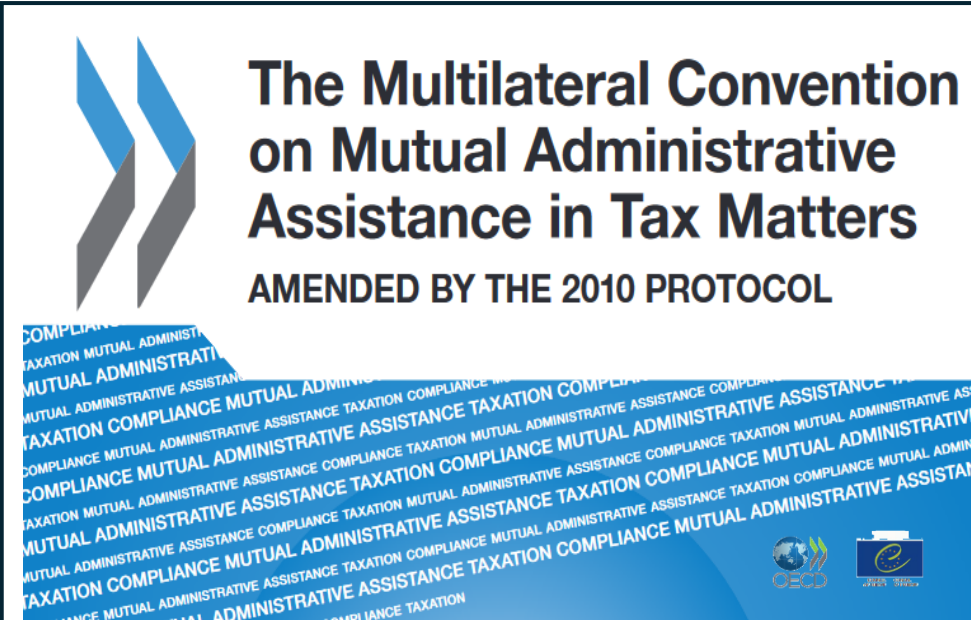
- EAG are FIs with common ownership of 50%
- If one member is a non-participating FFI, then all are considered a non-participating FFI
- If the CI trust is not a participating FFI, then 30% withholding on any payments to any member of the EAG (viz to the subsidiary Investment Entity)
- However, under the general rule, only a **corporation** can be treated as the common parent of an EAG.
- This means that a **trust**, which is **not a corporation**, would not automatically be included in an EAG.
- However, the regulations provide an **election** that changes this treatment.
- **Impact of an election for Non-Corporate Entities:**
 - The IRS regulations state that "an entity other than a corporation may **elect** to be treated as the common parent entity" for determining the composition of an EAG.
 - This indicates that including the CI trust in an EAG is not automatic but is optional through a formal election.
 - If the election is made, the trust would be treated as part of the EAG.
 - If the election is not made, the trust would likely not be considered a member of the EAG under the general rule



One rotten apple spoils the barrel

f). Territories and dependencies excluded from Norway's tax agreements²⁶

https://www.oecd.org/content/dam/oecd/en/publications/reports/2008/02/the-convention-on-mutual-administrative-assistance-in-tax-matters_g1gh88ba/9789264041042-en.pdf

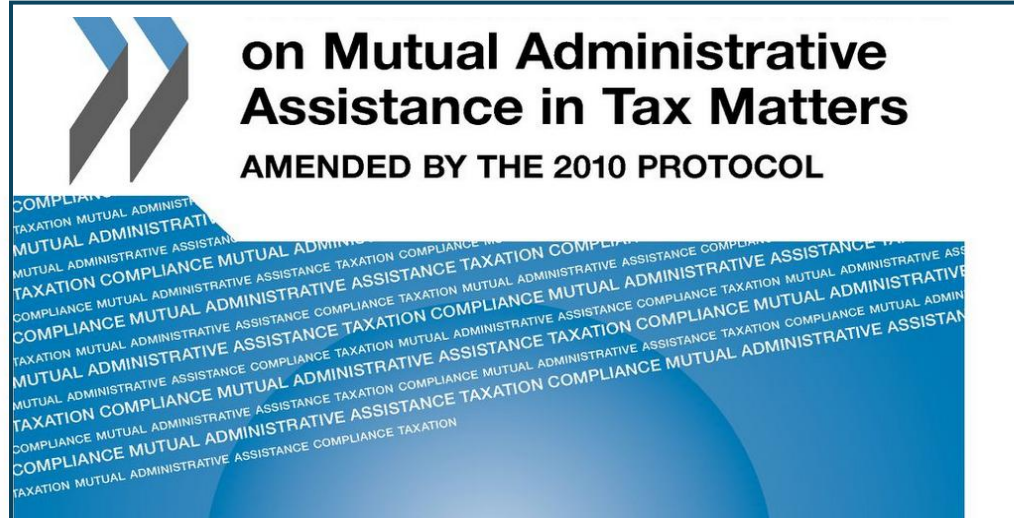


The Multilateral Convention on Mutual Administrative Assistance in Tax Matters

AMENDED BY THE 2010 PROTOCOL

Article 29 – Territorial application of the Convention

1. Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
2. Any state may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.



on Mutual Administrative Assistance in Tax Matters

AMENDED BY THE 2010 PROTOCOL

NORWAY

Declaration contained in the instrument of ratification deposited on 13 June 1989 - Or. Engl.

As regards Norway the Convention on Mutual Administrative Assistance in Tax Matters shall apply to the territory of the Kingdom of Norway, including any area outside the territorial waters of the Kingdom of Norway, where the Kingdom of Norway, according to Norwegian legislation and in accordance with international law, may exercise her rights with respect to the seabed and subsoil and their natural resources, the Convention does not apply to Svalbard, Jan Mayen or the Norwegian dependencies ("biland").

Svalbard is the only territory in the world explicitly excluded from the OECD Multilateral Convention on Mutual Assistance in Tax Matters

f). Territories and dependencies excluded from Norway's tax agreements²⁷

Global Forum on Transparency and Exchange of Information for Tax Purposes Global Forum prioritises **Exchange on Request**



– Putting an end to **offshore tax evasion**

With 172 members, the Global Forum on Transparency and Exchange of Information for Tax Purposes is the leading international body working on the implementation of global transparency and exchange of information standards around the world.

Since the G20 declared the end of banking secrecy in 2009, the international community has achieved great success in the fight against offshore tax evasion. Working through the Global Forum, countries and jurisdictions have implemented robust standards that have prompted an unprecedented level of transparency in tax matters.

[MORE ON WHO WE ARE](#)

– Our areas of expertise

[MORE ON WHAT WE DO](#)

Exchange of information on request

This standard requires the transparency of banking and accounting records as well as ownership of entities and legal arrangements. It provides a framework for obtaining information on request between tax authorities.

Automatic exchange of information

This standard allows for the automatic annual exchange of information on offshore financial accounts.

Capacity building and technical assistance

Capacity building and technical assistance activities ensure that all our members receive support, and benefit from the tools to implement the international tax standards. Guidance material, e-learning courses and virtual classes

If any country issues exchange on Request to Norway about tax-residents with an Financial Institution in Svalbard...



g). Alternate non-participating jurisdictions



Napoleon structure
(St Helena)

Corporate trustee
Director Svalbard



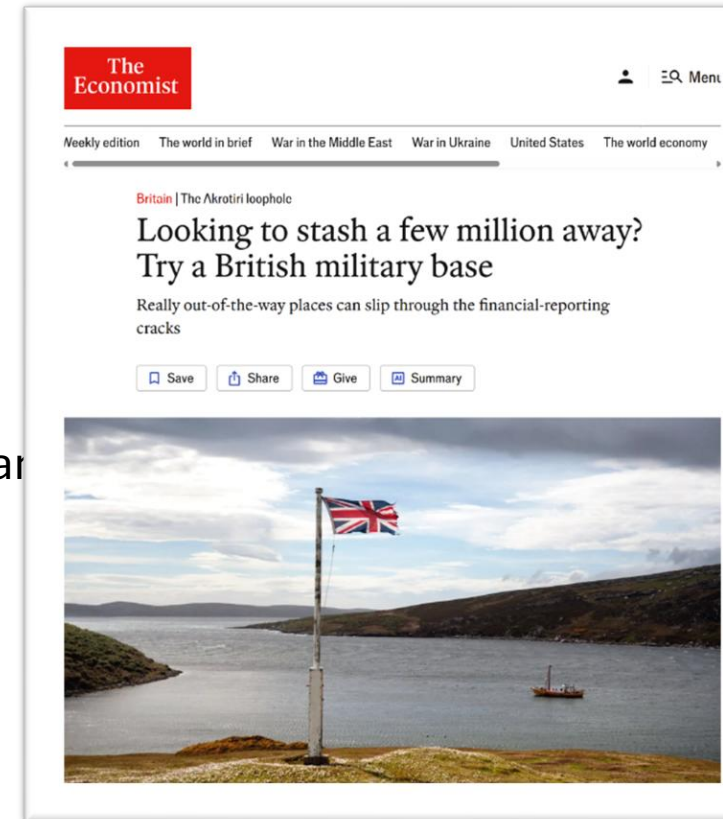
Penguin structure
(Falklands)

Corporate trustee
Director Svalbard



Military structure
(Akrotiri)

Trustee UK national
spouse of Crown Servar



h). LI/CH rejects EU/OECD Mandatory Disclosure Rules

DAC6 is not binding for Switzerland/Liechtenstein
No planned voluntary adoption of DAC6

To detect cross-border, potentially aggressive tax arrangements, the European Union has introduced a new tax transparency directive 2018/822 (DAC6)

DAC6 imposes mandatory disclosure requirements for certain arrangements with an EU cross-border element where the arrangements fall within certain 'hallmarks' mentioned in the directive and in certain instances where the main or expected benefit of the arrangement is tax advantage. (CRS avoidance)

Liechtenstein is a member of the European Economic Area but not of the European Union.

As the European Economic Area does not include the common tax policy, DAC6 is, as such, not binding for Liechtenstein.

There is currently no voluntary adaptation of the DAC6 regulation planned in Liechtenstein. Hence, the DAC6 mandatory disclosure rule is not applicable for Liechtenstein intermediaries and companies.