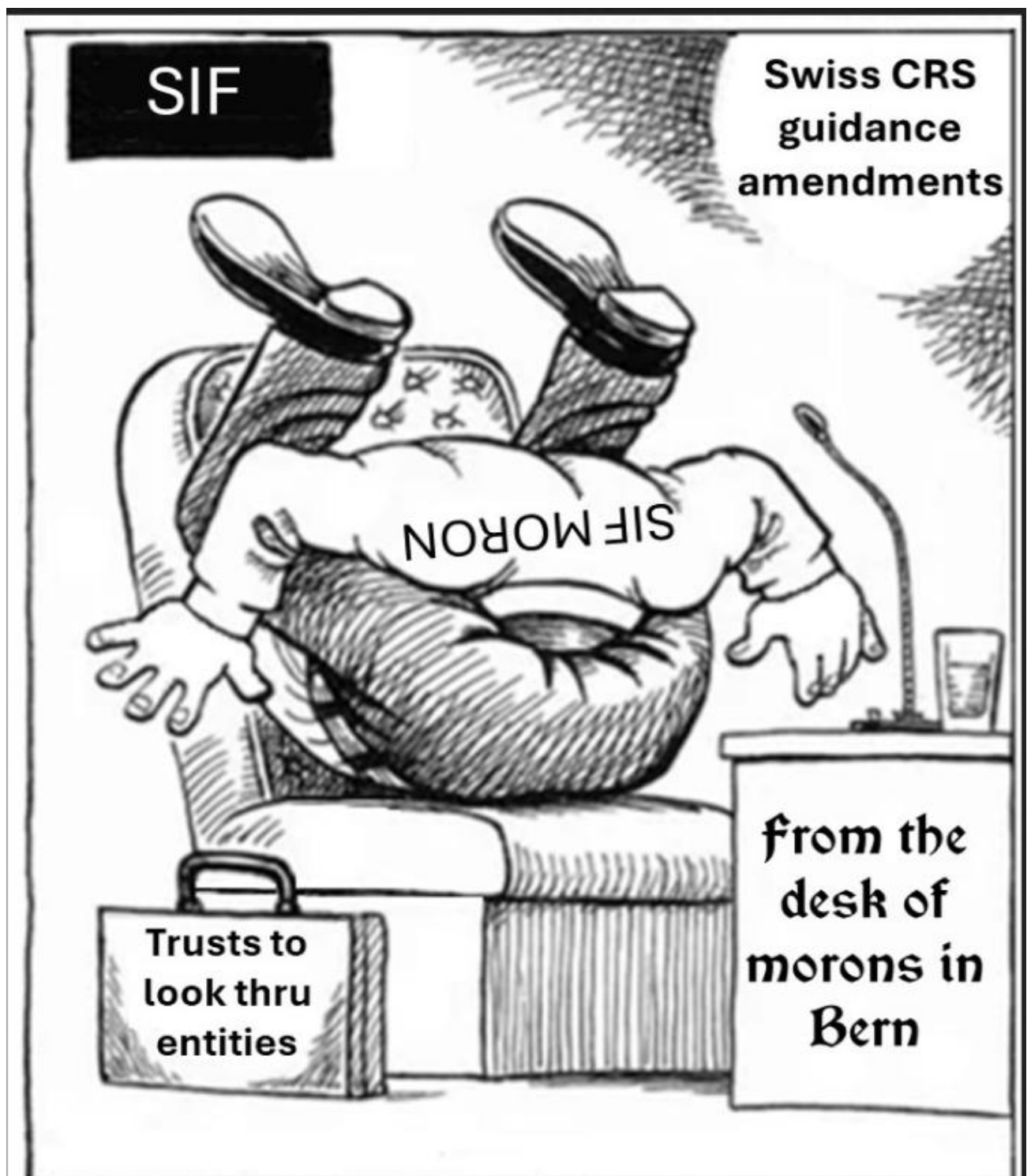


## Solving the hoax of Cook Island trusts for asset protection and confidentiality



# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## 1. What is the claimed effectiveness of Cook Island trusts

Several unique legal principles codified in its legislation (the **International Trusts Act 1984**).

1. **Statutory Prohibition against Foreign Judgments:** A Cook Islands court will **not enforce a foreign judgment** (e.g., from a US, UK, or other court) against the trust, the trustee, a protector, or the trust assets. A creditor must re-litigate their entire case from scratch in the Cook Islands, under Cook Islands law.
2. **High Burden of Proof for a Claimant:** A creditor challenging a transfer into the trust must prove their case "**beyond a reasonable doubt**" (the criminal standard of proof). This is significantly harder than the typical civil standard of "preponderance of the evidence."
3. **Short Statute of Limitations:** A claim to set aside a transfer into the trust must be brought within:
  - **Two years** from the date the asset was transferred into the trust, **or**
  - **One year** from the date the creditor's cause of action arose, **whichever is later**.
  - This short window makes it extremely difficult for a future, unknown creditor to successfully attack the trust.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## 2. What are the Key Asset Protection Features

Building on the legal principles above, here are the specific features that provide robust protection:

### ) Irrevocable and Spendthrift Nature

- **Irrevocable:** The Settlor (the person who creates the trust) typically gives up the power to revoke or amend the trust, preventing them from being forced to dismantle it later.
- **Spendthrift Clause:** This prevents a beneficiary from assigning their interest in the trust to a creditor and prohibits creditors from attaching the beneficiary's future distributions.

### ) Fraudulent Disposition Laws (The "Clawback" Defence)

**This is the core of the protection.** The laws are intentionally creditor-unfriendly:

- **Intent to Defraud Must Be Proven:** The creditor must prove **beyond a reasonable doubt** that the Settlor made the transfer **primarily with the intent to defraud *that specific creditor***.
- **Solvency at the Time of Transfer:** The trust is not voidable if the Settlor was solvent and able to pay their debts at the time of the transfer, even if they later become insolvent.
- **No "Constructive Fraud":** Unlike in many jurisdictions, you cannot be found to have "accidentally" defrauded a creditor. Actual, specific intent must be proven.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## ) **Forced Heirship Protection**

- The trust is immune to foreign legal claims based on "forced heirship" rules (laws in some countries that require a portion of an estate to go to certain heirs, like children). The Settlor's wishes as outlined in the trust document prevail.

## ) **Robust Trustee Structure**

- **Professional Trustees:** The trustee must be a licensed Cook Islands trustee company. These are experienced professionals who understand their fiduciary duties and the legal framework.
- **Separation of Control:** The Settlor can retain a significant degree of *indirect* influence through a **Protector** (often a trusted advisor or a company controlled by the Settlor) without legally "owning" the assets or controlling the trustee. The Protector can have powers to veto distributions, remove and appoint trustees, etc.

## ) **Confidentiality and Privacy**

- There is **no public registry** of trusts, Settlers, or beneficiaries.
- The trust documents are private and confidential.
- The licensed trustee is bound by strict confidentiality laws.

## ) **Perpetuity Period**

The Cook Islands allows for a very long perpetuity period (up to 150 years), enabling multi-generational wealth preservation and planning.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## 3. Who Uses Cook Islands Trusts?

- **High-Risk Professionals:** Doctors, surgeons, architects, and lawyers facing high malpractice lawsuit risks.
- **Business Owners & Entrepreneurs:** To shield personal wealth from business-related liabilities, creditors, or lawsuits.
- **Real Estate Investors:** To protect a portfolio from claims arising from any single property.
- **Individuals in Litigious Professions or Environments:** Public figures, celebrities, and those seeking a "litigation firewall."

## 4. Important considerations and limitations

- a) **Not for Hiding Assets from Existing Creditors:** The structure is for **future, unknown creditors**. If you transfer assets when you are already sued or know a claim is imminent, a Cook Islands court will likely rule against you. It must be established *before* trouble arises.
- b) **Cost and Complexity:** Setting up and maintaining a Cook Islands Trust is expensive. There are upfront legal and trustee fees and ongoing annual trustee management fees.
- c) **Not a Tax Haven in the Traditional Sense:** While the trust itself is tax-free in the Cook Islands, the Settlor and beneficiaries are still subject to the tax laws of their home countries (e.g., the IRS for US persons). **Tax compliance is critical.**
- d) **Requires Forethought:** This is a long-term, strategic planning tool, not a last-minute "fix" for an immediate financial crisis.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## 5. What is the legal Fortress Analogy

- **The Moat:** The requirement to re-litigate the case in the Cook Islands.
- **The High Walls:** The short statute of limitations and the "beyond a reasonable doubt" burden of proof.
- **The Gatekeeper:** The licensed, professional trustee who follows the rule of law.

## 6. What is the sham of asset protection of Cook Island trusts

- a) Subject to Automatic Exchange of Information via FATCA and CRS
- b) Subsequent, once initial preliminary data received. Exchange on Request/Demand possible as no longer categorised as a fishing expedition (MCAA is the legal basis signed by 180 countries)
- c) Once authority gets info, the courts can force Settlor to remit money back home under threat of imprisonment and fines with contempt of court imposition
- d) Excuse that trustee wont repatriate assets shot as courts say trust can be cancelled or overridden e.g. via protector

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## 7. What have been the Contempt of court findings against Cook Island Trusts

Based on US court records, individuals have indeed been unsuccessful in using Cook Islands trusts for asset protection when a US court orders them to repatriate the assets and they fail to do so. The "unsuccess" typically does not mean creditors seized the offshore assets, but that the trust settlers were held in contempt of court, facing fines or even jail time for not complying with repatriation orders.

**FTC v. Affordable Media, LLC** (Anderson Case) Settlers served as co-trustees, retaining too much control. Court found them in contempt for not repatriating assets; they were jailed until they attempted compliance.

**Lawrence Trust** was created in anticipation of a specific creditor claim. Settlor retained influence via power to replace trust protectors. Contempt finding for non-repatriation.

**SEC v. Solow Settlor** claimed no control but had used trust assets for personal expenses. Court ruled his "inability" to repatriate was "self-created" and found him in contempt.

**Advanced Telecommunication Network, Inc. v. Allen**) Funds were transferred to the trust after a court had already declared the transaction fraudulent. Contempt finding for failure to repatriate.

**Barbee v. Goldstein Settlor** was ordered to repatriate funds from a Cook Islands trust, failed to comply, and was jailed for contempt. Eventually agreed to terminate the trust.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## 8. What "Unsuccessful" Means in a US Court

- a) In these cases, the Cook Islands trust assets often remained protected from creditors physically and under Cook Islands law. The "loss" for the settlor occurred because US courts focused on the conduct of the person under its jurisdiction rather than the offshore assets themselves.
- b) Contempt of Court is the Primary Risk: When a US court believes you have the power to retrieve assets, but you refuse, the judge can impose coercive measures until you comply. This is the most common way these cases become "unsuccessful" for the defendant in the US.
- c)
- d) ·Control and Timing are Critical: Courts consistently rule against settlers who retain too much control over the trust (e.g., as a co-trustee or through power to appoint protectors) or who transfer assets after a legal threat has emerged. Such timing is seen as evidence of intent to defraud that specific creditor.



# **Solving the hoax of Cook Island trusts for asset protection and confidentiality**

## **9. Solving the hoax of Cook Island trusts for asset protection and confidentiality**

- a) Set up a SPV Custodial Institution
- b) Custodial Institution holds any Investment Entity company
- c) Trust now acts as a founder of any foundation in the world
- d) The founder is the Custodial Institution
- e) No reporting by foundation on the founder, because it's a trust it's a FI (Custodial Institution) located in Svalbard , a non-participating jurisdiction
- f) Also, no Exchange on Request on the founder as it's a non-participating jurisdiction
- g) No EAG FATCA withholding penalty as the Custodial Institution trust does not earn any income.
- h) OECD on this solution....

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

OECD Commentary on CRS verifies the foundation does not report on a Custodial Institution

## COMMENTARY ON SECTION VIII

Page 178. Subparagraph C(4) – Equity Interest

69. The definition of the term “Equity Interest” specifically addresses interests in partnerships and **trusts (and foundations)**. In the case of a trust that is a Financial Institution, an “Equity Interest” is considered to be held by any person treated as a **settlor** or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. The same as for a trust that is a Financial Institution is applicable for a legal arrangement that is equivalent or similar to a trust, or foundation that is a Financial Institution.

The same is applicable with respect to the treatment of a Reportable Person as a beneficiary of a legal arrangement that is equivalent or similar to a trust, or foundation.

**71. Where Equity Interests are held through a Custodial Institution, the Custodial Institution is responsible for reporting, not the Investment Entity.**

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## 10. Can we use a new trust instead of a foundation to receive the assets of the old Custodial Institution trust?

Yes. The new trust would **not** report on the original individual settlor in this scenario, provided there is no arrangement to avoid reporting. The trust reports the custodial institution as its settlor, and the custodial institution has its own separate reporting obligation.

### a) Key Definitions & Hierarchy

- Reportable Person: Under both FATCA (US) and CRS (non-U.S.), this is an individual or a Passive Non-Financial Entity (Passive NFE) with Controlling Persons who are individuals. Financial Institutions are generally not Reportable Persons.
- Financial Institution (FI): An entity that falls into categories like Custodial Institution, Depository Institution, Investment Entity, or Specified Insurance Company. They are Reporting Financial Institutions, not Reportable Persons.
- Custodial Institution: A subtype of FI that holds financial assets for others as a substantial part of its business.
- Settlor of a Trust: The person (individual or entity) who establishes the trust and transfers assets into it. The identity of the settlor is a primary factor in determining a trust's reporting obligations.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## **b) The Reporting Logic Chain for the New Trust**

When the new trust determines its reporting obligations, it follows a specific due diligence process:

- i. Identify the Settlor: The legal settlor is the Custodial Institution Trust. This is a fact-based determination based on the trust deed and asset transfer.
- ii. Classify the Settlor: The new trust must classify this settlor under the FATCA/CRS rules. The Custodial Institution Trust, as a Custodial Institution, is a Reporting Financial Institution.
- iii. Apply the "Account Holder" Test: For trusts, the settlor is treated as an "Account Holder." The reporting rules require a Financial Institution (the new trust) to identify whether its Account Holder (the settlor) is a Reportable Person.
- iv. Conclusion: The Custodial Institution is not a Reportable Person. It is a Reporting Financial Institution. Therefore, the new trust has no obligation to "look through" the institutional settlor to identify any underlying individuals.

The reporting chain stops at the institutional level. The new trust's obligation is to report the Custodial Institution Trust as its settlor (and likely as a controlling person, if applicable), and to classify it correctly as a Financial Institution with its own GIIN (for FATCA) or Jurisdiction of residence for CRS.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## c) Where Does the Reporting Happen? The "Push Down" Principle

However, as the CI is located in Svalbard, there will be no reporting by the CI.

- i. The information about the underlying individual is not lost; it is simply reported at a different point in the financial chain. This follows the "push down" or "look through" principle, which applies upstream, not downstream from a Financial Institution.
- ii. **The Custodial Institution Trust's Obligation:** As a Reporting Financial Institution itself, the Custodial Institution Trust holds a financial account (e.g., a securities account) for the original individual. It is obligated to perform due diligence on that individual.
- iii. **If the individual is a Reportable Person** (e.g., a U.S. citizen under FATCA, or a tax resident of a CRS-participating jurisdiction), the Custodial Institution Trust must report that individual's account to its local tax authority, which will exchange the information with the individual's jurisdiction of tax residence.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## 11. Why does AI or many lawyers / trust companies/SIF incorrectly opine the new trust must look through the CI even if it's not a reportable person

**CRS/FATCA is very structured and tiered. There is a strict push own of who reports. No duplicate reporting by FIs. This goes over the heads iof those misinterpreting AEOI**

- 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 sin 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
- The CRS on trusts says look through all entity controlling persons of trusts. However, two paragraphs before, it says look through to controlling persons of these entities only if the entity is a reportable person.
- This condition to not look through non reportable entities (e.g. FIs) goes over the heads of those making the erroneous conclusion to look through the Custodial Institution settlor.
- More clarity has been provided in the trust section of the CRS Implementation Handbook relation to the identification of Controlling Persons.
- The objective of the Handbook is to assist stakeholders in the understanding and implementation of the Standard and should not be seen as supplementing or expanding on the Standard itself.
- Purpose of Implementation Handbook is to provide "clarity". Clarity does not mean an amendment.

## Solving the hoax of Cook Island trusts for asset protection and confidentiality

- While the CRS itself provides that an account holder which is an FI is a non-reportable person, the Implementation Handbook states that 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, 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.
- FI equity interests of trusts are not a "blocker", All it does is shift reporting obligation from the FI trust to the FI equity interest account holder...
- Nowhere, I repeat nowhere does the Implementation Handbook clause on identifying controlling persons of trusts indicate the entity looked through includes non-reportable entities such as (i) FIs, (ii) regularly traded corporations, (iii) government entities, (iv) international organizations, and (v) central banks.
- The Implementation Handbook says, "Where an Equity Interest is held by an "Entity".
- It does NOT say the entity includes FIs or other non-reportable entities, such as Central banks. Let's delve more into this where FIs hold the Equity interest, as opposed to just "entities".
- CRS Due Diligence for pre-existing entities says report only accounts that are Reportable Persons.
- **Non reportable entities** are FIs like custodial institutions, central banks, government entities, international organizations and regularly traded corporations must be looked through.

# **Solving the hoax of Cook Island trusts for asset protection and confidentiality**

## **Cherry on the cake**

Other major jurisdiction's CRS guidelines on how they handle the "look through" aspect of the Implementation Handbook on Entity Equity Interest of FI trusts

## **Hong Kong IRD on the CRS treatment of trusts**

Chapter 17 page 4 par 20

If a settlor, beneficiary or other person exercising ultimate effective control over the trust is itself an entity, that entity must be looked through, and the ultimate natural controlling person(s) behind that entity must be treated as the equity interest holder.

**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**

Nowhere, I repeat nowhere does the Implementation Handbook clause on identifying controlling persons of trusts indicate the entity looked through includes non-reportable entities such as (i) FIs, (ii) regularly traded corporations, (iii) government entities, (iv) international organizations, and (v) central banks.



# Solving the hoax of Cook Island trusts for asset protection and confidentiality

exception. Jurisdictions like Hong Kong's CRS guidance says "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".

Swiss State Secretariat for International Finance (SIF) misinterpret the Implementation Handbook regarding entity equity interest of trusts.

SIF obliges FI trusts to look through all non-reportable persons such as FIs, international organisations, central banks, government entities, and regularly traded corporations.

CRS Commentary explicitly instructs FI trusts must NOT look through Custodial Institutions, but unbelievably the muppets at SIF still oblige FI trusts to do so.

Meanwhile jurisdictions like Hong Kong, obviously with their head on straight, say they currently do not believe the look through of 'entities' includes entities that are non-reportable persons. They await explicit instruction from OECD.

- Amendments to the CRS are NOT done via the CRS Implementation Handbook.
- The Handbook's purpose is to explain and simplify the language of the CRS and its Commentary to facilitate implementation.
- Changes reflected in the second edition of the Handbook provide additional and more up-to-date guidance on certain areas related to the effective implementation of the Standard. This is not amendments you muppets.
- The Handbook does not contradict or nullify or oppose anything in the CRS or its Commentary.
- Amendments to CRS are done via updates to the OECD CRS FAQ (changes to CRS are highlighted in yellow), or separate updates such as warning of high-risk Residence by Investment schemes used to avoid CRS.
- So Swiss think the Implementation Handbook amended or added an obligatory look through of FI Equity Interest is sadly mistaken when CRS Commentary page 178 par 71 states in black and white "Where Equity Interests are held through a Custodial Institution, the Custodial Institution is responsible for reporting, not the Investment Entity".

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## Swiss change their view

- The Swiss changed their CRS guideline and say, in direct conflict with the CRS that "The Swiss Federal Tax Administration has now changed its views on this point and as such, a FI trust is obligated to look through a settlor, trustee, protector or beneficiary that is an FI entity to locate the relevant controlling persons. This basically equates to treating the FI-equity interest holders of an FI-trust as Passive NFEs 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".
- Equity interest applies to any investment Entity, so why Swiss going only after trusts?
- The CRS Implementation Handbook says "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 the relevant Controlling Person.
- It doesn't say the that the equity interest here is an FI or other non-reportable entity (eg Central bank, regularly traded listed entity)
- Thank the lord, that jurisdictions like Hong Kong's IRD in its amended CRS guidance on trusts, used their brains and say "👉 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.
- Note: An excluded person is an FI, Regularly traded corporation, Government entity, International organisation and Central Bank.

The Swiss ignorants changed their minds and now oblige FI trusts to look through their entity equity/debt interest account holders, which are (i) FIs, (ii) regularly traded corporations, (iii) government entities, (iv) international organizations, and (v) central banks.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## Implementation Handbook Foreword

- The purpose of the CRS Handbook is to assist government officials in the implementation of the Standard for the Automatic Exchange of Financial Account Information in Tax Matters ("Standard") and to provide a practical overview of the Standard to both the financial sector and the public at-large.
- The Handbook provides a guide on the necessary steps to take in order to implement the Standard.
- Against that background, the Handbook is drafted in plain language, with a view of making the content of the Standard as accessible as possible to readers.
- The Handbook provides an overview of the legislative, technical and operational issues and a more detailed discussion of the key definitions and procedures contained in the Standard.
- This second edition of the Handbook is intended to be a living document and will be further updated and completed over time.
- Changes reflected in the second edition of the Handbook provide additional and more up-to-date guidance on certain areas related to the effective implementation of the Standard.
- This includes revisions to sections pertinent to the legal framework for implementation of the AEOI, data protection, IT and administrative infrastructures as well as compliance measures.
- More clarity has been provided in the trust section of the Handbook relation to the identification of Controlling Persons.
- The objective of the Handbook is to assist stakeholders in the understanding and implementation of the Standard and should not be seen as supplementing or expanding on the Standard itself.
- Cross references to the Standard and its Commentary are therefore included throughout the document.

Purpose of Implementation Handbook is to provide "clarity". Clarity does not mean an amendment.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## The Swiss Federal Tax Administration's Revised CRS Guidance

### 1. Who Is An Equity Interest Holder of a Trust Qualifying as a Reporting FI?

- At the basis of the CRS system lies the obligation imposed upon reporting FIs, including trusts which qualify as such, to identify their financial accounts in order to determine whether or not they consist in reportable accounts.
- The term "Financial Account" is defined in the CRS as an account maintained by an FI and includes, in the case of an Investment Entity, any equity or debt interest in the FI (Section VIII C. 1. CRS, p. 50).
- An "Equity Interest", in the case of a trust, is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust or any other natural person exercising ultimate effective control over the trust.
- Altogether, the identification of financial accounts and reportable persons is an important process as it determines the extent of an FI's reporting obligations.
- In its initial version of the CRS Guidance (the "Swiss CRS Guidance"), the Swiss Federal Tax Administration had remained true to the CRS as it had defined the equity interest holders of a trust that **qualified as an FI** as the settlor, beneficiary, or any other natural person exercising ultimate effective control over the trust.
- The Swiss Federal Tax Administration has now changed its views on this point and adopted the approach set out in the Implementation Handbook.
- In the Revised Swiss CRS Guidance, the equity interest holders of a trust **qualifying as an FI** now consist of the settlor, trustee, beneficiary or protector of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## 2. What Is An FI-Trust's "Look-Through" Obligation?

- A novelty introduced by the Revised Swiss CRS Guidance, which was also inspired by the contents of the Implementation Handbook, is the obligation imposed upon trusts to look through their entity-account holders.
- While the CRS itself provides that an account holder which is an FI is a non-reportable person, the Implementation Handbook states that 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, 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.

FI equity interests of trusts are not a "blocker", you blockhead. All it does is shift reporting obligation from the FI trust to the FI equity interest account holder... sheesh

- The Swiss Federal Tax Administration has adopted the views set out in the OECD's Implementation Handbook and included a section in the Revised Swiss CRS Guidance covering FI-trusts' obligation to look through any entity account holders and report on these entities' controlling persons.

## Solving the hoax of Cook Island trusts for asset protection and confidentiality

I strongly disagree with the Swiss that all equity interest entities, namely FIs like custodial institutions, central banks, government entities, International organizations and Regularly traded corporations must be looked through.

The CRS Commentary page 178 explicitly instructs reporting FI trusts must NOT look through a Custodial Institution holding equity interest in the trust...

Thank goodness jurisdictions like Hong Kong's CRS guidance says "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".

... but SIF drunkenly stumble ahead that 'entities' must mean ALL entities, without foreseeing the consequences.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

Look at the Handbook that causes the SIF to change its guidance on reporting obligation of FI trusts...

[CRS Handbook page 109-110 paragraphs 254 - 256](#)

## Chapter 6.3: The treatment of a trust that is a Reporting Financial Institution in the CRS

Identifying the Reportable Accounts of a trust that is a Reporting Financial Institution

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.

(iv) Applying the due diligence rules

255. The trust will apply the due diligence rules in the CRS in order to determine the identity and residence of its Account Holders.

!!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 the relevant Controlling Person. This look through obligation should correspond to the obligation to identify the beneficial owner of a trust under domestic AML/KYC procedures. !!

Nowhere, I repeat nowhere does the Implementation Handbook clause on identifying controlling persons of trusts indicate the entity looked through includes non-reportable entities such as (i) FIs, (ii) regularly traded corporations, (iii) government entities, (iv) international organizations, and (v) central banks.

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

The Implementation Handbook Page 109-110 par 255 cites several CRS and Commentary clauses 🖋️

🖋️ CRS page 51 paragraph 4

- The term "Equity Interest" means in the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust.
- So the handbook says entity Equity interest must be looked through to Controlling Persons. And open and shut case? Seems the SIF may be correct... ? Err
- The Implementation Handbook says "Where an Equity Interest is held by an "Entity".
- It does NOT say the entity includes FIs or other non-reportable entities, such as Central banks. Let's delve more into this where FIs hold the Equity interest, as opposed to just "entities".
- CRS Due Diligence for pre-existing entities says report only accounts that are Reportable Persons.
- Non reportable entities are FIs like custodial institutions, central banks, government entities, International organizations and Regularly traded corporations must be looked through.

🖋️ CRS page 38

- Only reportable accounts need due diligence
- Non reportable entities are FIs like custodial institutions, central banks, government entities, International organizations and Regularly traded corporations not have due diligence

🖋️ CRS page 41

- Section VI: Due diligence for new entities says determine whether entity is a reportable account.
- Non reportable entities are FIs like custodial institutions, central banks, government entities, International organizations and Regularly traded corporations must not be looked through.



# Solving the hoax of Cook Island trusts for asset protection and confidentiality

 [CRS Commentary page 178 paragraph 71](#)

Paragraph C – Financial Account - Subpar C(1) – In general -subparagraph C(4) – Equity Interest

71. Where Equity Interests are held through a Custodial Institution, the Custodial Institution is responsible for reporting, not the Investment Entity.

**Swiss morons instruct FI trusts to look through ALL entities, including non-reportable entities such as Custodial Institutions, despite CRS Commentary 178 explicitly saying not to do so.**

The OECD goes further and provides an example in par 71, to demonstrate a Custodial Institution will be responsible to report if it holds Equity Interest in the trust

- 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 and, from its perspective, its shares are Financial Accounts (i.e. Equity Interests in an Investment Entity).
- L must treat custodian Y as its Account Holder. As Y is a Financial Institution (i.e. a Custodial Institution) and Financial Institutions are not Reportable Persons, such shares are not object of reporting by investment fund L.
- For custodian Y, the shares held for A are Financial Assets held in a Custodial Account. As a Custodial Institution, Y is responsible for reporting the shares it is holding on behalf of A.

 [CRS Commentary page 139-140](#)

This clause is vital as it says to review the following entities

a) Passive NFE

b) Controlling Persons of such Passive NFE, (and non-participating and professionally managed investment entity)


c) whether any such controlling person is a reportable persons

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

 [CRS Commentary page 147](#)

This clause is vital as it says to review the following entities

- a) Passive NFE
- b) Controlling Persons of such Passive NFE, (and non-participating and professionally managed investment entity)
- c) whether any such controlling person is a reportable persons

 [CRS Commentary page 199](#)

- Controlling Persons are beneficial owners of Passive NFEs, not beneficial owners of FIs.

## OECD CRS FAQ on FI's Equity Interest held by a FI trust

- [OECD CRS FAQ](#) General Reporting Requirement page 2 Q.7 regarding look-through.
- It states "entity", it doesn't state FI entity.

## Why does the CRS specifically say not look through a Custodial Institution to the Controlling Persons?

- Custodial Institutions are generally huge brokerages or custodian banks such as Charles Schwab or [Pershing](#) (subsidiary of BNY-Mellon bank).
- If trying to identify the Controlling person of a CI, then no-one will be near the Controlling Person threshold shareholdings of 25% (or 10% in some jurisdictions)
- In that case the Controlling Persons will be deemed at senior management. That doesn't help anyone for CRS.
- Read my article "[What is an SPV Custodial Institution for CRS? Is it possible to determine the Controlling Persons?](#)"

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## Cherry on the cake

- Other major jurisdiction's CRS guidelines on how they handle the "look through" aspect of the Implementation Handbook on Entity Equity Interest of FI trusts

## Hong Kong IRD on the CRS treatment of trusts

Chapter 17 page 4 par 20

- he equity interests are held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. The reference to any other natural person exercising ultimate effective control over the trust, at a minimum, will include the trustee as an equity interest holder. Further, a discretionary beneficiary will only be treated as an account holder in the years in which it receives a distribution from the trust.
  - If a settlor, beneficiary or other person exercising ultimate effective control over the trust is itself an entity, that entity must be looked through, and the ultimate natural controlling person(s) behind that entity must be treated as the equity interest holder.
  - 🚫 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
- 
- Using logic and following the CRS commentary that FI equity interest is not looked through. The CRS commentary says "Where Equity Interests are held through a Custodial Institution, the Custodial Institution is responsible for reporting, not the Investment Entity".
  - The term "controlling persons" as applies in the context of passive NFEs will also apply here, which also corresponds to the term "beneficial owner" as described in Recommendation 10 and the Interpretive Note of Recommendation 10 contained in the 2012 FATF Recommendations.
  - Compare the CRS Commentary plus Hong Kong IRD guidance which is clearly correct, with the Swiss clowns at SIF who lump all FIs, which are persons excluded from the definition of reportable person, as entities

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

## Swiss CRS authorities are so incompetent

- Swiss CRS authorities not only misinterpret the Implementation Handbook, but fail to use their noggin in understanding the obvious that the Implementation Handbook word "Entity", does not include FI entities.
- The Swiss miserably fail to take into account the CRS Commentary page 178 par 71 which in states black and white "Where Equity Interests are held through a Custodial Institution, the Custodial Institution is responsible for reporting, not the Investment Entity"
- The Swiss think don't understand that the Implementation Handbook, merely explains the CRS in simpler language to assist in implementing the Standard.
- Why do the Swiss think that the Implementation Handbook takes precedence over the CRS and it's Commentary
- In fact, the OECD CRS FAQ General Reporting Requirements Page 2 Q.7 states "The Standard provides that where the settlor of a trust is an "Entity", Reporting Financial Institutions must also identify the Controlling Person(s) of the settlor and report them as Controlling Person(s). It doesn't say FI entity.

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## How do countries like Singapore guide on this issue?

- Some countries like Singapore merely parrot verbatim the Implementation Handbook that Reporting FI trusts must look through entities to identify controlling Person, without opining if this entity is reportable or not.

They do not opine if the entities looked-through include reporting FIs

### [IRAS FAQs on the Common Reporting Standard - Singapore](#)

#### Reportable Accounts

Page 19 D.7 Controlling Persons: Equity Interest holders in the case of a trust that is a SGFI

- In the case of a trust that is a Singapore FI, which are the parties that are regarded as the holders of the Equity Interests (financial accounts of the trust)?
- *In the case of a trust that is a SGFI, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. This means that where the settlor, beneficiary or other person exercising ultimate effective control over the trust is itself an Entity, the SGFI would be required to look through that Entity to determine the relevant Controlling Person(s) who will be considered to be the Equity Interest Holder. In the conduct of the look through requirement, SGFIs may rely on information collected and maintained pursuant to AML/KYC Procedures. In respect of New Accounts, SGFIs must obtain a self-certification, which may be part of the account opening documentation and confirm the reasonableness of such self-certification based on the information obtained by the SGFI in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. The AML/KYC Procedures applied by the SGFI must be consistent with MAS' AML/CFT requirements, which are in turn consistent with the FATF Recommendations*

# Solving the hoax of Cook Island trusts for asset protection and confidentiality

Page 36 F.10 Where the Financial Institution is an Investment Entity, what are the Financial Accounts that are required to be reported by the Financial Institution?

- *A Financial Institution that is an Investment Entity is required to report on its Financial Accounts, i.e. the equity and/or debt interests in the Financial Institution, that are Reportable Accounts. Please note that Financial Accounts that are held by a Financial Institution that is an Investment Entity, as an Account Holder with a Depository Institution e.g. its bank accounts with the Depository Institution, are not its Reportable Accounts.*

## Summary

- Thank goodness jurisdictions like Hong Kong have their heads on straight and understand everything
- Unfortunately, if you're a Swiss trustee, you are going to have to wait for Swiss authorities to pull their head out of their ass
- At the very least, if you're a Swiss trustee, do not look through Custodial Institutions that hold equity interest in FI trusts. If audited, show the CRS and Commentary.
- If the Swiss muppets oblige FI trusts to look through all entities that are not reportable persons then tell them you are not going to look through non-reportable entities such as Regularly Traded Corporations, Government entities, International Organisations and Central Banks.
- This implies the Swiss are wrong and you should not guide that FI trusts are obliged to look-through other non-reportable entities which are FIs.

=====END=====