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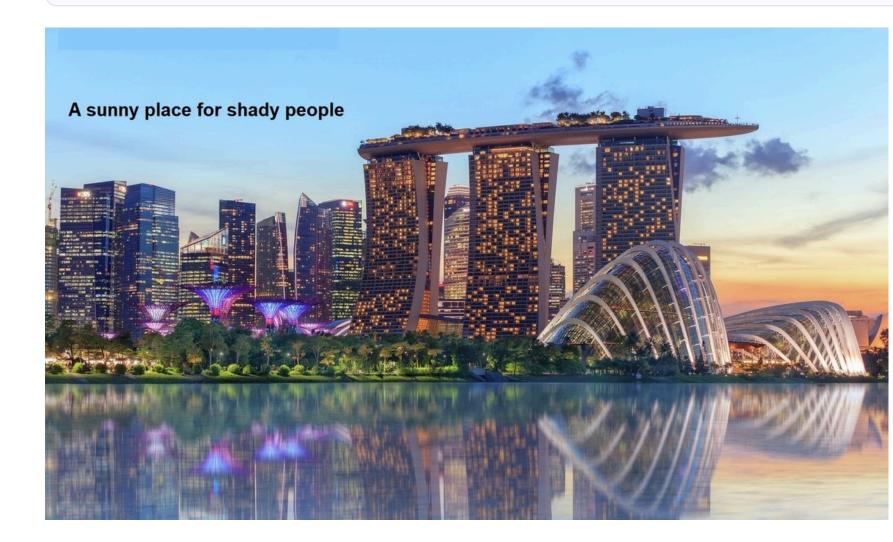
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Singapore's irrevocable trusts help Settlors hide undeclared assets by reporting zero. CRS participating jurisdictions should be furious.

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Mark Morris CRS and CARF expert. No, truly.

March 28, 2024

## Preface

• With a zero value report for Settlors, Singapore naively encourages tax evaders to stash their cash there.

• Before slamming Singapore, I'll presume that the authorities do not understand there are separate purposes of CRS, viz. (a) track undeclared capital for Settlors, and (b) monitor ongoing undeclared income for beneficiaries. IRAS is fixated on income.

• Roping in protectors likely targeting control aspects..

# Singapore, the hero of Zero

Nothing, naught, nada, zilch, goose eggs, bupkis, diddly-squat, jack squat, 🔬 zippo

• The purpose of the automatic exchange of financial information is so that your home tax authorities can find the loot and income you're hoarding in another country. • Simple? Well seems it's not so cut and dried in Singapore. Squirrel your swag in an irrevocable trust there and they'll report you are stone-broke. Darned attractive to crossborder tax evaders.

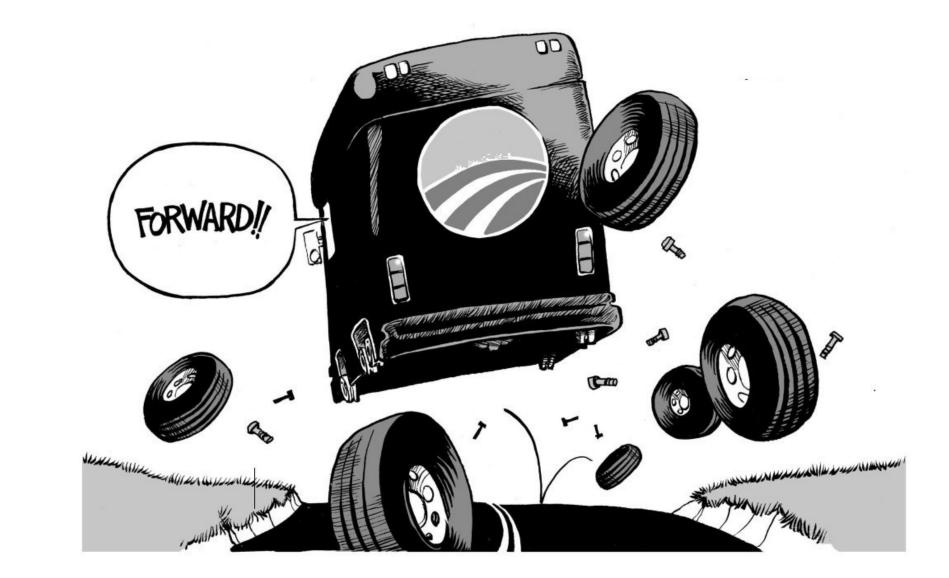
#### Messaging ··· Ľ ^

- Your authorities want to know the value of undeclared cash placed in a trust
- Your home country wants to know precisely how many assets you've concealed in a foreign trust. Even if your country recognises trusts and its CFC rules do not apply to irrevocable trusts, the tax authorities still want to know if the assets used to settle a trust were declared.
- E.g., Spain doesn't recognise trusts so they continue taxing Settlors on wealth as if the trust didn't exist. Germany would want to impose a 50% gift tax when a settler sets up an irrevocable trust.
- For CRS purposes, this implies the report for the Settlor should be the trust value, regardless of whether revocable or irrevocable.

#### Irrevocable Passive NFE trusts - no problem

• The OECD CRS Implementation handbook paragraph 268 is clear that the Settlor of an NFE trust is reported regardless of whether the trust is revocable or irrevocable. • It enumerates the worth to be reported for the Settlor as the total account balance or value. Spain, Germany, et. al. satisfied.

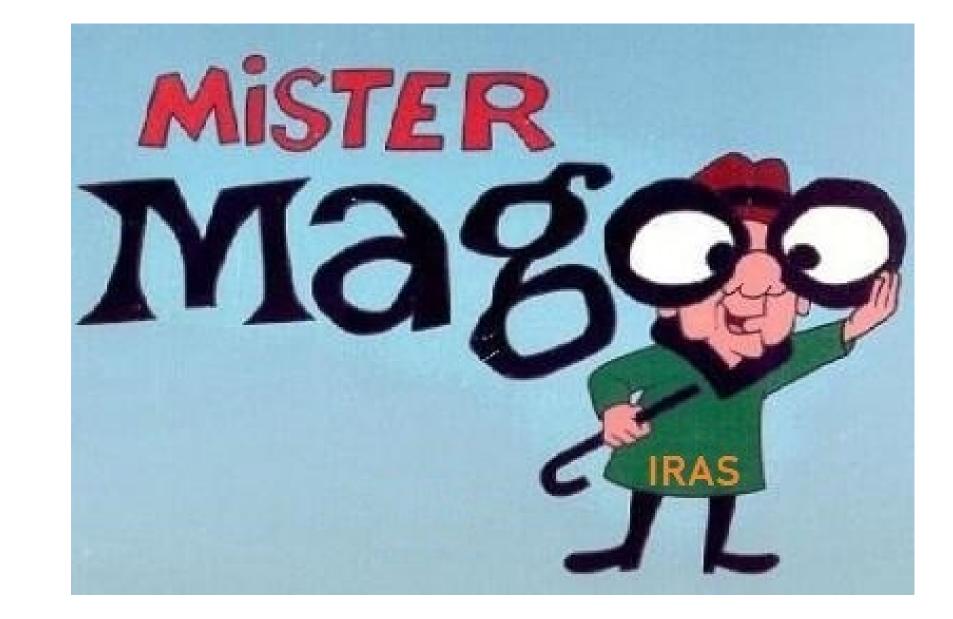
### Irrevocable Investment Entity trusts - oops, big problem



• The wheels come off regarding the worth reported for Settlors of Singapore irrevocable Investment Entity trusts. Sure, CRS implementation handbook paragraph 261 says The financial information to be reported will depend on the nature of the interest held by each Account Holder. Otherwise, report the total property value. I will describe why this refers to the beneficiaries of the trust, not the Settlor.

#### Singapore CRS FAQ: Pg. 33 F9

Where the trust is an Investment Entity, can the account balance information to be reported for each Account Holder of the trust be different, depending on whether the trust is revocable or irrevocable, whether the Settlor is a beneficiary or not, and whether the trust is discretionary or not? Yes. Where the value or balance attributable to each Account Holder is individually derived based on the nature or arrangement of the trust, such value or balance can be reported. For example, where the Settlor is not a beneficiary of an irrevocable trust, the account balance attributable to him can be reported as nil.



- Gosh, no, no, no, wrong! Sweet words to tax evaders. As a side note, the Singapore FAQ clause regarding a Settlor not being a beneficiary of an irrevocable trust is a moot (stupid) clause which causes all the problems.
- Singapore is befuddling Settlers and beneficiaries. Settlors and beneficiaries are discrete data elements using the CRS Extensible Markup Language schema terminology. • Virtually every jurisdiction, including the UK and its territories, applies the separation of
- Settlor and beneficiary principle in CRS reporting.

It is important to note that beneficiary as well as a settlor of a trust that is an FI (qualifying as an Account Holder in both instances) would be treated as having two accounts with that trust. These will need to be assessed and reported on separately.



• However, Singapore conjures up a misguided odd rule that a Settlor is to be treated as a discretionary beneficiary when he has renounced his equitable interest to access the trust assets. The trustee then allocates a zero reporting value to this mythical combined Settlor-beneficiary. The mind boggles at this perversion of logic. The Settlor electing to surrender their equitable interest does not mean the value of the assets used to settle the trust is zero. • Sheesh, simples.

# Follow the OECD logic

- So the expected retort from Singapore is that indeed it is I that *misinterprets* an
- irrevocable FI trust must report the the total property value for the Settlor.
- Err, excuse me, it's not an *interpretation*. The OECD has opined that irrevocable trusts are the same as irrevocable insurance.
- Study carefully how the OECD tackled abuse of irrevocable insurance to avoid reporting on the policyholder.
- Insurers tried a similar bogus tactic to value a 'settlement' of an irrevocable insurance policy as zero to escape the definition of cash value insurance.
- The OECD FAQ update knocked this misinterpretation on its head by stating that if a policyholder elects to renounce their rights to access the policy value, then the reportable
- person remains the policyholder. • The cash value does not magically get wiped out by renouncing your rights to access the
- cash value.
- Similarly, the settlement value of a trust does not get wiped out by the Settlor surrendering their equitable interest
- Secondly, and this is the strongest case, your honour, the CRS states that for Passive NFE

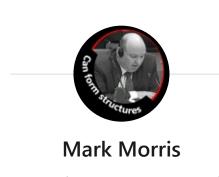
trusts, the total account value or balance is reported for the Settlor regardless of whether the trust is revocable or irrevocable. • Bear in mind the difference between FI and Passive NFE trusts is either (a) the trustee is an individual, or (b) the trust does not predominantly earn investment income. • Not much of a difference, eh? Certainly no difference in the purpose of the trust. • So why would the OECD instruct Settlors to have the account value reported for irrevocable Passive NFE trusts and yet accept a zero value for FI trusts? • Nope, sorry, not buying that. Sure, trustees know more than banks about what beneficiaries of FI trusts are entitled to due to complex conditions. • So trustees can report value reported according to reports calculated. Failing that report account value.

### The weak retort by Singapore

"As we report the existence of Settlor, albeit with a zero value, Spain, etc. can follow up with a request on demand to IRAS about the value of the trust assets. IRAS will then request this info from the trustees". Sure, sure. Spain is going to follow up on requests on zero zero-value reports. In any event, the XML schema does not distinguish fields for FI trusts for Settlors as it does for Controlling Persons.

### Summary

• Jurisdictions want to know if their tax residents have settled foreign trusts with undeclared assets. As such, they want the value of the trust account to be reported, regardless of whether the trust is revocable or irrevocable. The OECD is unambiguous that the account balance be reported for Passive NFE irrevocable trusts. • Although the CRS does not explicitly state this for FI trusts, it is obvious the same treatment should apply. Only a tax evader would agree that a zero value is appropriate for settlement amounts.



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