

Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

We unveil how a SPV Custodial Institution UK trust administered from onshore British and Norwegian territories provides unmatched confidentiality and asset protection. Furthermore, these trusts can be resettled to trusts globally whilst maintaining their core objective. Readers will find it challenging to locate all of the cited territories.

Debuting Polar bear, Napoleon, Penguin and Military trusts

These structures unveil the exceptional privacy proffered by UK non-resident custodial institution trusts administrated in the onshore British and Norwegian territories. The author is the only financial planner to proffer trusts located in the British territories of St Helena, Akrotiri, Dhekelia, Falklands and Asension and the Norwegian territory of Svalbard.

Furthermore, this may be alluring for the global wealth management industry, as the UK non-resident trust can be resettled/decanted to any trust/trustee worldwide whilst safeguarding the settlor's privacy. As a result, trustees from diverse jurisdictions can offer enhanced asset protection trusts,

The confidentiality aspects of Automatic Exchange of Information (AEOI) do not mitigate the settlor's tax disclosure obligations viz FBAR, Form 8938, PFIC, CFC rules, etc. It is debateable whether GAAR's subjective approach of ignoring contrived transactions and the wide exemption from Mandatory Disclosure Rules can reduce the structure's efficacy.

Why the above Polar bear trusts, and others consign trusts traditional asset protection trusts in the Cook Islands, Nevis, Jersey or Belize to the 20th century antiquity bin

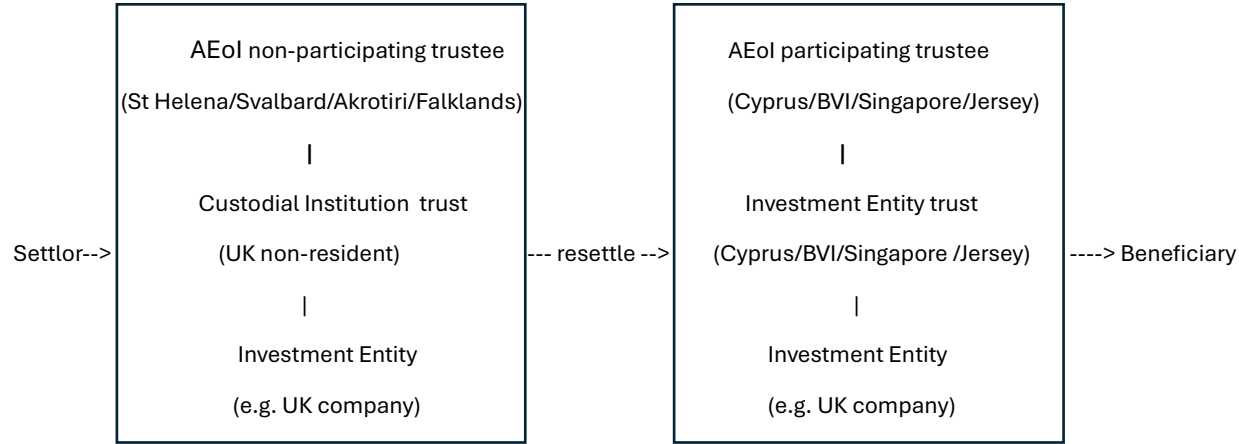
It is imprudent to ground asset protection on jurisdictions not recognizing foreign judgements. This indicates your creditors are already aware of the assets you have unsuccessfully squirreled away. Other gimmicks do not protect discovery of assets, such as spendthrift provisions protecting assets from future distributions to beneficiaries, curtailed statute of limitations, prioritising settlement to debtors over creditors, or some jurisdictions exclude fraudulent transfer statutes. What if the creditor's jurisdiction does not recognize trusts and deems the asset still belong to the settlor?

Creditors cannot make claims against your assets if they are unaware of their existence. It is physically impossible to trace the ownership of the assets if the underlying investment entity is owned by a non-reportable non-participating SPV custodial institution. Exchange on demand on the trustee is not possible as these countries do not have a tax agreement with any country. The PSC of the investment entity is the trustee. There is no relying on the trust's jurisdiction not recognizing foreign judgements.

Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

Preface

- Settlor of resettled trust is the non-reportable Custodial Institution trust
- Custodial Institution does not report on the original settlor
- Custodial Institution trust does not register with TRS, HRMC or anywhere the trustees are located (unless nexus with the UK)
- It is impossible to trace the original settlor. providing exceptional asset protection



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Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

1. Why this structure offers unmatched asset protection and confidentiality (Settlor is not reported/registered)

i. Confidentiality by the Custodial Institution trust

- a) Trusts are located for AEoI where the trustees are resident
- b) The Custodial Institution trust does not have any reporting obligations for AEoI as none of the trust locations are participating in AEoI
- c) The Custodial Institution is not registered in any of the jurisdictions where the trustee is resident.
- d) A UK non-resident trust is not registered on the UK Trust Register Service (TRS serves as the trust b.o. register) unless it directly or indirectly, owns UK real estate.
- e) The UK non-resident trust is not registered with HMRC unless the trust is liable for taxes on UK assets or UK income¹.
- f) No exchange on demand on the trustee is possible as these jurisdictions do not have tax agreements

ii. Confidentiality by the underlying Investment Entity

- a) The underlying Investment entity files a “no reportable person” for AEoI because its equity interest (account holder) is the Custodial Institution, a non-reportable FI².
- b) The UK PSC of a trustee owned company is generally the trustee³. Persons other than the trustee may be PSC of a trust⁴ if the person has the right to exercise “significant influence or control” over a trust or firm if that person has the right to influence the running of the activities of the trust or revoke the trust.
- c) As the trustee is resident in a jurisdiction without tax agreements, no exchange on demand regarding owners of the company is possible

iii. Confidentiality by the resettled trust

If the Custodial Institution trust is resettled to a new trust, the settlor of the new trust is the Custodial Institution.⁵ A Custodial Institution is a non-reportable person, even if it is located in a non-participating jurisdiction. Only non participating Investment Entities are treated as reportable NFEs⁶.

¹ Gov.UK: Trusts and taxes .You must register a non-resident trust if it becomes liable for: tax on UK income, or tax on UK assets <https://www.gov.uk/trusts-taxes/registering-a-trust>

² CRS Commentary Section VIII Defined Terms Financial Accounts C(4) Equity interest Page 178 par 71 Where Equity Interests are held through a **Custodial Institution**, the Custodial Institution is responsible for reporting, not the Investment Entity.

³ Gov.UK Guidance People with significant control (PSCs) . If your company is controlled by a trust If the trust or firm meets any nature of control, you’ll need to record all trustees or members/partners of the firm as PSCs of your company and register this information at Companies House.

⁴ Statutory Guidance on the meaning of “Significant Influence or Control” over companies in the context of the Register of People with Significant Control Section 5. Trusts and firms

⁵ See Q8 of this article Is a trust the settlor of a resettled trust.

⁶ OECD CRS Reportable Account page 58 par 8 The term **Passive NFE** means any: NFE that is not an Active NFE; or an Investment Entity that is not a Participating Jurisdiction Financial Institution.

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iv. FATCA

- a) The Custodial Institution is a non-participating FFI.
- b) The Custodial Institution will not register for a GIIN⁷.
- c) There is no payment flow to the Custodial Institution.
- d) Therefore, there won't be the 30% withholding penalty on gross payments.
- e) Nor will a recalcitrant account holder be reported
- f) The Custodial Institution will not tick the Expanded Affiliate Group box and hence the underlying entity can qualify as a stand-alone FFI. Note for CRS, an FI need not have a GIIN⁸

Tax mitigation

- a) The UK underlying company can be a dormant company⁹ if there are no significant accounting transactions in a calendar year, for instance passively owning a static foreign Private Placement Life Insurance.
- b) Tax planning is beyond the scope of this paper.

⁷ GIIN is an abbreviation of Global Intermediary Identification Number. The FATCA registration system approves foreign financial institutions (FFI), financial institution (FI) branches, direct reporting non-financial foreign entities (NFFE) <https://www.irs.gov/businesses/corporations/fatca-registration-and-ffi-list-giin-composition-information>

⁸ OECD CRS FAQ Section II Due Diligence requirement page 11 q.27 Can Reporting Financial Institutions solely rely on the fact that an Account Holder is included in the FATCA FFI list to reasonably determine that such Account Holder is a Financial Institution pursuant to Section V(D)(1)(b) or Section VI(A)(1)(b)? No. Section V(D)(1)(b) and Section VI(A)(1)(b) specify that the use of publicly available information is subject to the condition that such information can be relied upon to "reasonably determine" the status of the Entity. While the FATCA FFI list is included as an example in paragraph 12 of Section V of the Commentary, the mere inclusion of an Account Holder on the FATCA FFI list is not sufficient on its own to reasonably determine that such Account Holder is a Financial Institution for CRS purposes.

⁹ UK.Gov on Dormant Companies <https://www.gov.uk/guidance/corporation-tax-trading-and-non-trading>

Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

2. Can a trust be a Custodial Institution? (Yes, for AEol)

All structures outlined in this paper are UK non-resident trusts with subsidiary Investment Entities, typically owned by the trustee.

HMRC confirms a UK trust¹⁰ which is a Financial Institution is most likely an Investment Entity. A trust may alternatively be a Custodial Institution if it holds assets for the account of someone else (namely, the trust's beneficiaries) and at least 20% of its income is custody-like¹¹ fees.

¹⁰ IEIM400700 - Custodial Institution Trusts: 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 [see IEIM400640].

¹¹ OECD CRS Commentary section VIII Defined Terms Custodial Institution Page 160 par 9 Income attributable to holding Financial Assets and related financial services

Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

3. What is a SPV Custodial Institution trust (Established for one settlor)

- a) The OECD CRS FAQ describes the treatment SPV custodians¹². The term SPV Custodial Institution is rarely understood or utilized as it is mentioned only once in the CRS/FATCA documentation.
- b) An SPV custodian acts as a record holder for securities within an SPV set up by a main entity. The SPV need not be a subsidiary. The custodian helps isolate risks and liabilities related to specific investments from the main entity. For CRS, the SPV Custodian referred to in the CRS FAQ, due to reference to the income test, relates to a Custodial Institution established for one group of settlors.

Difference between Custodial Institution vs a nominee for CRS.

i. Custodial Institution

- a) A Custodial Institution¹³ (i) is an entity (incl. a trust), (ii) holds assets for the account of others, and (iii) earns at least 20% of its income from custody-like¹⁴ (holding of Financial Assets and related financial services) fees.

II. Nominee

- a) A nominee¹⁵ (could be a natural person or an entity), holds assets for other persons.
- b) A nominee is not a Financial Institution.
- c) A nominee is not a Financial Institution if either (i) it is an individual, or (ii) an entity that earns less than 20% of its income from custody-like fees
- d) In the case of a Financial Institution maintaining the financial accounts of a nominee, will not treat the nominee as the account holder but will treat the persons for whom the nominee is holding the account, as the account holder.

¹² OECD CRS FAQ Section VIII: Definitions Reporting Financial Institutions Page 14 Q.9. Treatment of corporate trustees and SPV custodians

¹³ OECD CRS Section VIII: Definitions Reporting Financial Institutions page 44 par A(4) Custodial Institution means any entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income

¹⁴ OECD CRS Commentary Section VIII Defined Terms Custodial Institution

¹⁵ OECD CRS Commentary Section VIII Defined terms: Subsection E Miscellaneous page 61 par A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of the Common Reporting Standard, and such other person is treated as holding the account.

Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

4. What are the Polar bear, Napoleon, Penguin and Military Custodial Institution trusts (Details at www.co-ownershiptrust.com)

i. Polar Bear Trust

- a) Is a UK non-resident SPV Custodial Institution trust with an individual trustee resident in Svalbard. Svalbard is a sovereign territory of Norway but does not follow all the laws of Norway. Due to its own tax legislation, it is explicitly excluded from all of Norway's tax and exchange of information agreements. Thus, reporting FIs in Svalbard have no AEOI reporting obligations
- b) Svalbard is also not part of FATCA's intergovernmental agreements, meaning FFI are not required to register for a Global Intermediary Identification Number or report to the IRS. If the FFI does not receive income there is no penalty.
- c) FATF confirms although trusts cannot be created under Norwegian law, foreign trusts are not prohibited and can be operated by trustees residing in Norway¹⁶. In Norway, the Money Laundering Act (Hvitvaskingsloven) imposes strict anti-money laundering and counter-terrorist financing obligations on trustees (forvaltere or stiftelsesforvaltere) when they act in a professional capacity or considered operating in Norway. Under Norwegian law¹⁷, trustees of foreign trusts are considered to be operating in Norway if either of the following conditions is met:

i. Subject to Customer Due Diligence under the Money Laundering Act

- If the trustee is required to perform customer due diligence measures under Norway's Money Laundering Act, they are deemed to be operating in Norway.
- This typically applies if the trustee conducts financial or business activities in Norway that fall under anti-money laundering regulations, such, as managing assets or handling transactions involving Norwegian entities or financial institutions, or even opening an account with domestic bank

ii. Acquisition of Real Property in Norway

- If the trust acquires real estate in Norway, the trustee is considered to be operating in the country. This triggers obligations under Norwegian law, including potential registration, tax compliance, and AML requirements.

¹⁶ FATF anti money laundering and counter terrorist financing Norway: Legal persons and arrangements
<https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/7-Legal-Persons-and-Arrangements-Mutual-Evaluation-Norway-2014.pdf>

¹⁷ <https://www.wr.no/en/news/the-obligation-to-register-beneficial-owners-in-norwegian-companies-comes-into-effect-today-1-october-2024> The obligation to register beneficial owners in Norwegian companies came into effect 1 October 2024. Trustees of foreign trusts and similar legal arrangements will be considered to be operating in Norway if (i) they are subject to customer due diligence measures under the Money Laundering Act or (ii) they acquire real property in Norway. An example of foreign trusts that will be subject to registration in the register are trusts that have a bank account in Norway. As a result of the customer relationship with a Norwegian bank, the trust will be subject to customer due diligence measures by a Norwegian reporting entity.

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iii. Napoleon Trust

- a) Is a UK non-resident Custodial Institution trust with its trustee resident in St Helena, a British Overseas Territory. The island is famous for the place where Napoleon Bonapart was exiled to until his death six years later, after his defeat at Waterloo to the British and Prussians.
- b) St Helena has no tax treaty with any jurisdiction, is not participation in CRS/FATCA/CARF (Crypto Asset Reporting Framework) making it a "non-participating jurisdiction" for AEol.
- c) No trust registry in the St. Helena.
- d) Unlike traditional tax havens, St Helena does not impose substance rules

iv. Penguin Trust

- a) Is a UK non-resident Custodial Institution trust with its trustee resident in the **Falkland Islands**, a British Overseas Territory. (Referred to as the penguin trust as the penguin population is over a million).
- b) St Helena has no tax treaty with any jurisdiction, is not participation in CRS/FATCA/CARF (Crypto Asset Reporting Framework) making it a "non-participating jurisdiction" for AEol.
- c) No trust registry in the Falklands.
- d) Unlike traditional tax havens, Falklands does not impose substance rules

Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

v. Military Trust I

- a) Is a UK non-resident Custodial Institution trust with its trustee resident in **Akrotiri** (a UK Sovereign Base Area in Cyprus).
- b) Akrotiri is a UK Sovereign Base Area (SBA). The other base is Dhekelia. They have no tax treaty with any jurisdiction, not participation in CRS/FATCA/CARF (Crypto Asset Reporting Framework) making them "non-participating jurisdictions" for AEol.
- c) UK crown servants, i.e. military personnel or living on the RAF base are tax resident in the UK and all other non-UK national civilians are tax resident in Cyprus according to the 1960 treaty of establishment.
- d) Trustee is a UK national, a spouse of UK military person, not resident in the UK, nor in Cyprus. Therefore, resident in Akrotiri for AEol purposes.
- e) No trust registry in Akrotiri.
- f) Unlike traditional tax havens, does not impose economic substance rules

vi. Military Trust II

- a) Is a UK non-resident Custodial Institution trust with its trustee resident in Ascension Island (A UK military base, with 800 civilians working with military contracts, mostly nationals from St Helena) .
- b) Ascension is a military base with no tax treaties, no participation in CRS/FATCA/CARF (Crypto Asset Reporting Framework), making it a "non-participating jurisdiction" for AEol reporting
- c) No trust registration requirements, .
- d) Trustee is a company incorporated in Ascension.
- e) No trust registry in Ascension.
- f) Unlike traditional tax havens, does not impose economic substance rules

Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

5. For AEol, must a Custodial Institution be subject to financial laws or supervision by agencies having regulatory oversight of Financial Institutions (No)

- a) For automatic exchange of information, the term Financial Institution¹⁸ means a **Custodial Institution**, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
- b) 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 under CRS.

¹⁸ As defined in CRS subpar A(3) - A(8)

Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

6. What unexpected custodial-type fee categorizes an Entity as a Custodial Institution for AEoI (Financial advice on assets potentially held)

i. Income test

- a) CRS¹⁹ defines the income test for a Custodial Institution attributable to holding financial assets and related financial services. The unexpected custody-like fee is for “providing financial **advice** with respect to Financial Assets held in (or **potentially to be held**) custody by the entity”.
- b) This means an Entity holding assets for the account of someone else and provides non-discretionary advice to buy, say, listed artificial intelligence stocks to be potentially held in custody, qualifies the Entity as a Custodial Institution, if the custody fees are at least 20% of the gross income.
- c) Bear in mind a Custodial Institution earning income for its client, does not count as income of the Custodial Institution, as there will be an equal liability to the client for investment income earned.

ii. Custodial Institution’s fees collected by unrelated third parties

- a) The updated OECD CRS FAQ ²⁰ explicitly specifies that fees for custodian fees can be paid to another entity. No mention on the related connection aspect promulgated by some domestic legislation. The OECD updated the CRS FAQ after some countries domestic CRS legislation requiring third parties be related to the Custodial Institution
- b) The OECD CRS FAQ is unambiguous that no attribution-connection need exist with the third parties collecting fees for SPV Custodial Institutions. Some jurisdictions, as New Zealand, basing their CRS regulations on domestic tax laws, promulgate that third parties collecting custodian fees must be related to the Custodial Institution (e.g., under common management or common parent ownership)

¹⁹ OECD CRS Commentary Section VIII Defined Terms Custodial Institution page 160 par 9-10 It further establishes the “substantial portion” test. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity’s gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity’s gross income. Income attributable to holding Financial Assets and related financial services” means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions with respect to Financial Assets held in custody; income earned from extending credit to customers with respect to Financial Assets held in custody; income earned on the bid-ask spread of Financial Assets held in custody; and **fees for providing financial advice with respect to Financial Assets held in (or potentially to be held in) custody by the entity**; and for clearance and settlement services

²⁰ OECD CRS FAQ Section VIII: Definitions Reporting Financial Institution Page 14 Q.9. 9. Treatment of **SPV custodians**. For the purposes of the gross income tests to be applied in the context of the definitions of **Custodial Institutions** 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

Why a UK non-resident trust structure archaizes asset protection jurisdictions, such as Cook Islands, Nevis, Jersey, Belize, etc.

7. Is a trust the settlor of the resettled trust (Yes, do not confuse with tax laws)

- a) The recognition that our trust is the settlor of the resettled trust is an unnecessary contentious issue. The trustee of the Custodial Institution trust resettles the trust to an Investment Entity trust, located anywhere in the world. If the resettled trust is revocable and the trustee of the old Custodial Institution trust can regain access to the resettled trust's assets, then the trustee is the settlor of the resettled trust. However, the trustee is resettling the assets to a new trust on behalf of the old Custodial Institution trust. A trust is just an arrangement and cannot legally own assets. The trustee owned the assets on behalf of the trust. Similarly, the trustee of the old Custodial Institution is settlor of the new trust on behalf of the trust. The trustee was never the beneficial owner of the assets he has resettled.

Feature	<i>Decant</i>	Resettle
Legal Basis	Governed by decanting laws	Court approval if substantial changes to terms.
Modification	Limited by statute	More flexible, can make fundamental changes
Original Trust Terminated	No, assets are moved but original trust may remain	Yes, original trust is replaced
Beneficiary Consent	Often not required	Usually required

- b) A trust can be the settlor (creator) of another trust. This is a common scenario where a trust is established to manage assets for the benefit of beneficiaries, and that the trust establishes a further trust for a specific purpose or to distribute assets more efficiently. The settlor is the legal entity that creates the trust and transfers assets to the new trustee. A trust can act as a settlor by creating a new trust, transferring assets to the new trust, and designating the new trust's trustee and beneficiaries.
- c) For CRS, a trust is treated as either a Financial Institution or a Non-Financial Entity depending on its activities²¹. A trust can be the controlling person of a NFE trust²². The OECD CRS defines a settlor as controlling person of a NFE trust²³, and the settlor can be an entity. However, in the proposed structure, the resettled trust will be an Investment Entity, a reporting financial institution. In such case the settlor will be the equity interest. The settlor will be the old Custodial Institution. Trusts can be the equity interest. The CRS states²⁴ clearly that where a Custodial Institution is the equity interest of a reporting Investment Entity, the Custodial Institution is responsible for reporting, not the Investment Entity.

END OF ARTICLE

²¹ OECD CRS Sections VIII Defined Terms Reporting Financial Institutions page 44 (A)(6), Reportable Accounts page 58 (D)(8)

²² OECD CRS Commentary: Trusts par 137-138

²³ OECD CRS Implementation Handbook page 71 par150. In the case of a trust, the term Controlling Persons is explicitly defined in the Standard to mean the **settlor**, the trustee, the protector, the beneficiaries or class of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. If the **settlor**, trustee, protector, or beneficiary is an **Entity**, the Reporting Financial Institution must identify the Controlling Persons of such Entity.

²⁴ CRS Commentary Section VIII Defined Terms Financial Accounts C(4) Equity interest Page 178 par 71 Where Equity Interests are held through a Custodial Institution, the Custodial Institution is responsible for reporting, not the Investment Entity.