

All Jersey trusts are grantor trusts in US law - or so ...

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A lawyer with some sympathy for what is argued here sent me the following, which [comes from the IRS](#) in the USA:

Q: Who is a grantor of a trust?

A: The grantor (also known as trustor, settlor, or creator) is the creator of the trust relationship and is generally the owner of the assets initially contributed to the trust. The grantor generally establishes in the trust instrument the terms and provisions of the trust relationship between the grantor, the trustee, and the beneficiary.

Q: What is a grantor trust?

A: "Grantor trust" is a term used in the Internal Revenue Code to describe any trust over which the grantor or other owner retains the power to control or direct the trust's income or assets. If a grantor retains certain powers over or benefits in a trust, the income of the trust will be taxed to the grantor, rather than to the trust. (Examples, the power to decide who receives income, the power to vote or to direct the vote of the stock held by the trust or to control the investment of the trust funds, the power to revoke the trust, etc.) All "revocable trusts" are by definition grantor trusts. An "irrevocable trust" can be treated as a grantor trust if any of the grantor trust definitions contained in Internal Code – 671, 673, 674, 675, 676, or 677 are met. If a trust is a grantor trust, then the grantor is treated as the owner of the assets, the trust is disregarded as a separate tax entity, and all income is taxed to the grantor.

Q: What are irrevocable/revocable trusts?

A: An irrevocable trust is a trust, which, by its terms, cannot be modified, amended, or revoked. For tax purposes an irrevocable trust can be treated as a simple, complex, or grantor trust, depending on the powers listed in the trust instrument. A revocable trust may be revoked and is considered a grantor trust (IRC – 676). State law and the trust instrument establish whether a trust is revocable or irrevocable. If the trust

instrument is silent on revocability, then most states consider the trust revocable

He says:

- * The new Jersey trust rules make it likely that almost all trusts in Jersey set up by Americans should now be considered grantor trusts;
- * The universal right to revoke on application to the Court in Jersey now means that it does not matter if the trust deed says the deed is revocable or not; the state has to decide for itself, and the balance of judgement is to assume the trust can be revoked.

Which is more evidence that the financial services industry is so blind as to purpose that it can negate the very benefits it is seeking to provide. Except of course that it relies on secrecy to hide these things from those who need to know of them.

Which begs the real question. Would most tax havens survive without secrecy even if they offered their supposed 'tax advantages'? I doubt it.

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