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[Jersey passes law allowing 'sham' trusts for use by tax evaders](#)

I have always had a considerable problem with the concept of trusts, even as a practicing tax accountant. But I have much more of a problem with Jersey's new trust laws passed in May 2006 which allow the creation of 'sham' trusts where there is in fact no such thing, but just the bogus impression of one. I have even more difficulty with this because I have no doubt that Jersey knew the new laws would facilitate tax evasion. Indeed, it is hard to see what other purpose they could have.

Let me deal with the concept first though. Trusts are an instrument normally only available in Anglo Saxon common law. [Wikipedia](#) describes a trust as:

"a relationship in which a person or entity (the trustee) holds legal title to certain property (the trust property) but is bound by a fiduciary duty to exercise that legal control for the benefit of one or more individuals or organizations (the beneficiary), who hold "beneficial" or "equitable" title"

I have simplified this slightly for clarity, but that is a fair description. To put it another way, one person says to a second "please look after this asset for me, but when doing so make sure (for example) that the income goes to this third person during their life and when they die the remaining property goes to another, fourth person". All trusts are meant to incorporate this split of roles, responsibilities and entitlements. If they did not then there would be no need for a trust. The property would be owned absolutely by one person for their own benefit.

Why is this important? There are two reasons. First of all trusts are not registered. Unlike companies or partnerships which are either legal entities, or which if trade have to disclose their identity, if not their accounts, there is no requirement anywhere that I know of for a trust to be registered even though it is an artificial arrangement that exists only under the rule of statute law, even if the concept started in common law. So trusts are used to assist secrecy on and offshore, and especially in the latter case where nominee trustees act as trustees to hold nominee shares in companies managed by nominee directors etc., etc. As the Swiss rightly point out this means that the UK and its offshore dependencies do not need banking secrecy to achieve the benefit for clients they had to introduce banking secrecy for, Anglo Saxon common law countries achieve it through trusts. This secrecy is almost without exception harmful.

Second, and as importantly, the role of trusts in tax planning is dubious at best. Unfortunately the UK has encouraged this. For example when the EU Savings Tax Directive was introduced the entities for whom disclosure of information would have to be made did, in the opinion of the EC, include trusts. But the UK objected, saying trusts were not entities and so helped massively reduce the effectiveness of the Directive. It was not one of the UK's prouder moments.

Now I come to my main point. Because the use of a trust can prevent disclosure of offshore interest earned under the terms of the EU Savings Tax Directive to a person's

home country of residence those seeking to avoid such disclosure have poured their cash into them. My recent research on funds held in Jersey proves this point. And, as a matter of fact the trust market in Jersey has boomed, up by 30%, for example, in 2004 according to Phil Austin, CEO of Jersey Finance. The reason is simple. There are a great many people who have money on which tax has been evaded in Jersey and elsewhere and who do not want the interest declared to their home state as that would lead to questioning on where the money on which the interest was paid came from as well as to questions about the interest itself. Using a trust prevents such questions arising and perpetuates the tax evasion.

But note what a trust is. It is something where the settlor gives the property away. This imposes a cost on the settlor. But now look at what Jersey's doing with its new trust law. These are explained by the Jersey firm of [Volaw Trust & Corporate Services Limited](#). Jersey will now allow the creation of what can only be called 'sham trusts', although they're calling them trusts with 'reserved powers for the settlor'. What are those reserved powers? Well, the settlor can tell the trustee what to do, which means the trustee only has a nominee role. And the settlor can claim the property back, which means that no gift of assets into trust has taken place since they clearly remain in the ownership of the settlor in that case. And, because they can be claimed back the settlor is always likely to be the beneficiary of such a trust. In other words, the settlor continues to have complete beneficial ownership of the asset and there is in fact no trust in existence at all, just a sham that suggests that there is.

In that case what is Jersey actually doing by passing this law? It is creating a situation where a person can claim they have put an asset into trust but the reality is they have done no such thing. This is a completely bogus transaction. And why would Jersey want to do this now? I have no doubt that a primary reason is to assist people who wish to avoid declaring their income under the EU Savings Tax Directive or suffer tax withholding at source, which is the alternative. Indeed, at a meeting I attended recently some very senior people in the financial services industry complained about the effort they have had to put into the process of creating such arrangements to assist those clients who had evaded funds offshore and who do not wish them to be disclosed now even though (as I suggested to them) they are assisting money laundering by doing so. These new trusts assist that objective and shoot a massive hole through Jersey's claim to only want legitimate business in the Island.

There is only one purpose for this new law. It is to promote secrecy, and the prime use for that is to assist tax evasion.

This legislation proves that the mentality of promoting aggressive tax avoidance and even of providing shelter for outright tax evasion persists in Jersey, and is, regrettably, assisted by its government, which passes legislation of this type that facilitates such arrangements.