

THE MUTED IMPACT OF THE CAYMAN ISLANDS’ ABANDONMENT OF THE RULE AGAINST PERPETUITIES

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ABSTRACT

The Cayman Islands functions as a prominent *tax haven* and is a popular location for citizens across the globe to establish foreign trusts. In August 2024, the Cayman Islands enacted legislation to abandon the Rule Against Perpetuities (RAP). The abandonment of the RAP is an extremely relevant ratification to international citizens who establish trusts in this area. The relevance is that a trust in the Cayman Islands may now last indefinitely. By lasting indefinitely, US taxpayers can grow their assets in the trust without any time constraints requiring them to vest those assets. However, this new legislation will not provide a significant income tax benefit for those US citizens and their ultimate beneficiaries, only deferral benefits. Although a trust may now continue indefinitely without vesting in the Cayman Islands, that grown trust will be subject to US income tax when a US beneficiary receives it. While there is some deferral benefit, the harsh anti-deferral mechanisms on income tax in the US outweigh this deferral benefit. Thus, if it is a US citizen’s goal to benefit financially and avoid tax consequences because of the long vesting period in the Cayman Islands, that goal will not be accomplished through the new enticing legislation in the Cayman Islands.

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INTRODUCTION

This Comment will examine the consequences to US taxpayers in response to the Cayman Islands Perpetuities Act (the Act) abandoning the age-old Rule Against Perpetuities (RAP). The Act passed through Parliament in July 2024 and was subsequently enacted on August 22, 2024.¹ Prior to this enactment, the Cayman Islands followed the prior Perpetuities Act, which enforced a maximum perpetuity period rather than an indefinite vesting period.² The prior rule had a maximum perpetuity period of 150 years in addition to a wait and see period.³ Thus, a court would deem an interest invalid when it became clear that the future interest in question would not vest within the 150 year limit.⁴ At issue in this Comment is the abandonment of the Rule Against Perpetuities meaning a trust may no longer vest indefinitely. Because the Cayman Islands abandoned the rule putting a limit on how long until a trust can vest to a beneficiary, it may be assumed that those forming trusts would be drawn to this jurisdiction. However, at least under current law, US citizens creating foreign trusts in the Cayman Islands will not experience substantial income tax benefits from the Act because of existing US tax code provisions and regulations that apply to foreign trusts. Thus, if a US citizen wishes to benefit financially by avoiding income tax consequences because of the long vesting period in the Cayman Islands, that goal will not be accomplished through the new enticing legislation in this jurisdiction.

While reading this Comment, the reader should consider individuals privileged enough to be allocated to the high-net-worth category of wealth. Specifically, consider two different high-net-worth

¹ Andrew Miller, *The end of an era – the Cayman Islands disapplies the rule against perpetuities – Perpetuities (Amendment) Act, 2024*, BEDELL CRISTIN (Aug. 27, 2024), [https://www.bedellcristin.com/knowledge/briefings/the-end-of-an-era-the-cayman-islands-disapplies-the-rule-against-perpetuities-perpetuities-amendment-act-2024/#:~:text=The%20Perpetuities%20\(Amendment\)%20Act%2C,be%20subject%20to%20the%20rule](https://www.bedellcristin.com/knowledge/briefings/the-end-of-an-era-the-cayman-islands-disapplies-the-rule-against-perpetuities-perpetuities-amendment-act-2024/#:~:text=The%20Perpetuities%20(Amendment)%20Act%2C,be%20subject%20to%20the%20rule) [https://perma.cc/RBE5-4FYT].

² Robert Lindley, Wesley O'Brien & Lana Dixon, *Disapplication of the Rule Against Perpetuities Takes Effect in the Cayman Islands*, CONYERS (Aug. 2024), <https://www.conyers.com/publications/view/disapplication-of-the-rule-against-perpetuities-takes-effect-in-the-cayman-islands/#:~:text=The%20Act%20further%20provides%20that,%20Private%20Client%20&%20Trust%20team> [https://perma.cc/T4Q5-A3EZ].

³ *Id.*

⁴ *See wait and see*, MERRIAM WEBSTER, <https://www.merriam-webster.com/legal/wait%20and%20see#:~:text=noun,limit%20compare%20rule%20against%20perpetuities> (last visited Feb. 18, 2026) [https://perma.cc/KVT7-ZEA6].

families: one from Norway and one from the US. These families will be examined later while comparing their respective countries' regulations. It is likely that these individuals want to set aside a large portion of assets to benefit future generations of their families. However, the individuals must ask how to best set up trusts for the greatest financial and tax benefits to themselves and their future family members. All individuals must consider the tax consequences of creating a trust and what jurisdiction may be most beneficial for their trust to exist within. This Comment will set forth the tools needed to advise an American individual, and help people understand the aspects they must consider before establishing a trust in the Cayman Islands.

This Comment suggests that, because of laws and regulations adopted by Congress and Treasury, a US citizen cannot recognize significant income tax benefits by taking advantage of the Act in the Cayman Islands. Part I of this Comment provides a background on trusts and the US income tax rules having significant tax consequences for trusts. Part II of this Comment addresses current events surrounding offshore trusts, especially in the Cayman Islands. Part III of this Comment describes the current theme of high-net-worth individuals placing their assets in offshore trusts and specifically describing the Cayman Islands' new legislation to abandon the RAP. Lastly, Part IV describes the overall tax consequences that high-net-worth individuals, who are drawn to create a foreign trust in the Cayman Islands, would experience because of the new legislation.

I. TRUSTS AND THE CORRESPONDING US TAX CONSEQUENCES

This Comment focuses on the US income tax consequences for an individual and their beneficiaries who set up a Cayman Islands trust and a domestic trust. This Part begins by focusing on the tax consequences leading a taxpayer to use a trust. Additionally, this Part explains domestic, foreign trusts, and the corresponding tax benefits and consequences of each.

A. OVERVIEW OF TAX CONSEQUENCES

Assets may be subject to federal gift and estate tax in addition to income tax.⁵ While gifts are normally a nontaxable event, large gifts exceeding the annual exclusion amount are taxable.⁶ For 2026, the gift tax exclusion will remain at \$19,000.⁷ If a gift made in any given year exceeds the annual exclusion amount for that year, a gift tax is not owed if the total gifts made during the donor's lifetime do not exceed the lifetime exclusion amount.⁸ This amount is subject to change, but for 2026 it is \$15,000,000 for a single taxpayer and twice that amount for a married couple.⁹ There is only one exclusion amount available to taxpayers and it applies to both gift and estate taxes; any portion thereof not used during the taxpayers life is available to offset estate taxes at death.¹⁰ With the exemption amount currently so high, many Americans may believe they will never hit the estate or gift tax exemption. But it is worth noting that the Tax Cuts and Jobs Act, which doubled the exemption amount, was originally set to expire in 2025, bringing the exemption amount back down.¹¹ However, the Big Beautiful Bill Act extended the Tax Cuts and Jobs Act and there is no indication of the exemption amount falling anytime soon.¹² The exemption amount before The Tax Cuts and Jobs Act for single filers was \$5.5 million in 2017 and was raised to \$11.1 million once the exemption was enacted.¹³ Based on the indefinite expiration date of the Tax Cuts and Jobs Act, tax professionals and Americans must keep an eye on new

⁵ Suzanne L. Shier & David Diamond, *Foreign Person's Creation of Trusts for U.S. Beneficiaries* (N. Tr. Mar. 2017) (on file with author).

⁶ *Gifts and Inheritances 1*, I.R.S. (Jan. 23, 2026), <https://www.irs.gov/faqs/interest-dividends-other-types-of-income/gifts-inheritances/gifts-inheritances-1> [<https://perma.cc/93WH-GJT7>].

⁷ *Id.*; I.R.S., *IRS releases tax inflation adjustments for tax year 2026, including amendments from the One, Big, Beautiful Bill* (Oct. 9, 2025), <https://www.irs.gov/newsroom/irs-releases-tax-inflation-adjustments-for-tax-year-2026-including-amendments-from-the-one-big-beautiful-bill> [<https://perma.cc/49NZ-6RTH>].

⁸ *Gifts and Inheritances 1*, *supra* note 6.

⁹ *See id.* (for example, assume that taxpayer gives \$219,000 to one child during 2026 and that taxpayer has not yet, in their lifetime, given more per year to anyone than the annual exclusion in place for that year. That taxpayer does not owe gift tax, but the remaining amount of that taxpayer's lifetime exclusion will be reduced by \$219,000 to \$14,781,000).

¹⁰ *Estate Tax*, I.R.S. (Dec. 22, 2025), <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax> [<https://perma.cc/55MR-3L4W>].

¹¹ Andrew Lautz & Arianna Fano, *The 2025 Tax Debate: Individual Estate and Gift Taxes in TCJA*, BIPARTISAN POL'Y CTR. (Apr. 9, 2025), <https://bipartisanpolicy.org/explainer/the-2025-tax-debate-individual-estate-and-gift-taxes-in-tcja/> [<https://perma.cc/9VZJ-FH6G>].

¹² *One Big Beautiful Bill Act*, Pub. L. No. 119–21, § 70421, 139 Stat. 72, 223 (2025).

¹³ Lautz & Fano, *supra* note 11.

legislation to understand when they may be more vulnerable to estate tax consequences.

When an individual creates an irrevocable trust, whether domestic or foreign, the trust avoids US estate tax.¹⁴ If the Tax Cuts and Jobs Act expires and the estate tax exemption amount decreases, more Americans will be subject to the estate tax. To avoid estate taxes under the current unpredictable timeline of legislation, Americans should consider placing assets into an irrevocable trust. Resultingly, the repeal of the RAP in the Cayman Islands will not have much of an effect on estate tax since that tax is already avoided through an irrevocable trust. The lack of estate tax worries requires more analysis into other tax consequences that can arise. The rest of this Part will discuss different types of wealth organization strategies and the income tax consequences that stem from those strategies.

B. DOMESTIC TRUSTS

A settlor forms a trust to ensure that their valuable property benefits the intended person or entity.¹⁵ Many people set up trusts to ensure the beneficiary will be granted assets when the beneficiary will be of the right maturity, and to ensure those assets in the trust are shielded from the beneficiary's creditors.¹⁶

The party who initially owns the property is the grantor, while the person benefiting from the property is the beneficiary.¹⁷ Rather than the grantor just giving the property over to the beneficiary, a trust involves a third party; this third party is called a trustee.¹⁸

A basic domestic trust may be either a revocable trust or an irrevocable trust.¹⁹ Revocable trusts allow the grantor to amend the trust after it has been set up.²⁰ Because the grantor still retains dominion over the property under a revocable trust model, the grantor is still subject to federal taxes on this property.²¹ An irrevocable trust is more permanent

¹⁴ Alice Rokahr & Maggie Cockburn, *Foreign Trusts & US Tax Implications*, 61 S.D. L. REV. 420, 426 (2016).

¹⁵ *Trust Dep't Policies & Procs. Manual* § 3A.12 (2024); Shier & Diamond, *supra* note 5.

¹⁶ DUNCAN OSBORNE & MARK OSBORNE, *Asset Protection: Trust Planning*, ALI-ABA COURSE OF STUDY, 224 (2010).

¹⁷ Arthur L. Corbin, *Current Legal Forms with Tax Analysis* § 9.35 (2024).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

and requires the grantor to ensure a proper transfer of property initially.²² Unlike revocable trusts, the grantor does not hold sole dominion over the property after the trust is formed.²³ As a result, the grantor is not subject to federal taxes on income generated by the property after the trust is set up.²⁴ However, the trust itself is subject to income tax.²⁵

Tax consequences are important to consider when setting up a revocable or irrevocable trust. In fact, many people consider moving their assets from their home state to another state to avoid high income or inheritance taxes.²⁶ There may be additional aspects related to the specifics of state taxation; however, this Comment solely focuses on federal taxation. To understand federal income tax consequences as they apply to trusts, it is helpful to consider how the Internal Revenue Code views trusts, as it differs from how trust and estate planning lawyers view the creation of trusts. The Internal Revenue Code treats trusts as either grantor trusts or non-grantor trusts.²⁷ If the grantor holds some dominion over the trust it will be taxed as a grantor trust.²⁸ Because of this retained power over the trust, the grantor must report any income, deductions, and credits related to the trust on their individual tax return.²⁹ On the other hand, a trust is commonly taxed as a non-grantor trust in cases where a trust is irrevocable.³⁰ The US Treasury and Internal Revenue Service consider these non-grantor trusts as their own entities and gives each trust their own tax identification number.³¹

C. FOREIGN TRUSTS

Some US citizens decide to use a trustee located outside of the United States. Broadly, this type of arrangement is called a foreign trust.³² People and entities use foreign trusts instead of domestic trusts for a variety of reasons. Some entities and wealthy individuals believe they can avoid political and economic risks by placing their assets in foreign

²² *Id.*

²³ *See id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ DENIS A. KLEINFELD, 1 ADMINISTRATION OF TRUSTS IN FLORIDA § 15.16 (12th ed. 2026).

²⁷ *Id.* § 15.16(F).

²⁸ *Id.* § 15.16(C); I.R.C. §§ 673-678.

²⁹ I.R.C. §671.

³⁰ KLEINFELD, *supra* note 26, § 15.16(F).

³¹ *Id.* § 15.16(F).

³² *See id.* § 15.16(A).

trusts.³³ Some US settlors of trusts believe setting up a trust in a country other than the US is beneficial because creditors may be less likely to target that offshore jurisdiction if there is a future judgment against the settlor.³⁴ Many businesses have international ties and, for business operation purposes, holding a trust in a foreign country makes sense.³⁵ Just like domestic trusts, individuals or businesses forming foreign trusts also look for a country with a beneficial tax system that can assist them in reaching their financial goals.³⁶

A trust is domestic—rather than foreign—if a US court has primary jurisdiction over the trust or if a US citizen controls “all substantial decisions of the trust.”³⁷ If neither of these applies, the trust is foreign.³⁸ When a trust exists solely within the US, it may have less protection from US creditors compared to if it were a foreign trust. This is because, for a state jurisdiction, acquiring a tax payment from a trust set up in another US state is easier than acquiring that same payment from a trust set up in a foreign country.³⁹

One type of foreign trust is a foreign irrevocable life insurance trust.⁴⁰ This is a non-grantor trust⁴¹ created under a foreign jurisdiction’s laws.⁴² One feature of a foreign irrevocable life insurance trust is its ability to bypass paying US income taxes.⁴³ This is often done when the settlor puts all the assets that are in the foreign trust into foreign investments.⁴⁴ However, if the beneficiaries who are named in the foreign irrevocable life insurance trust are US citizens, these beneficiaries will not avoid paying because they will still have to pay US income tax once the assets are distributed to them.⁴⁵ Depending on the jurisdiction within which an individual places their foreign irrevocable life insurance trust, additional taxes may be avoided that would have been incurred in a US jurisdiction.⁴⁶

³³ *Id.* § 15.16(F).

³⁴ OSBORNE & OSBORNE, *supra* note 16, at 224.

³⁵ *Id.*

³⁶ *Id.* at 256.

³⁷ I.R.C. § 7701(a)(30)(E).

³⁸ *Id.*

³⁹ Edward D. Brown & Eric R. Kaplan, *A Guide to Foreign Irrevocable Life Insurance Trusts*, 16 J. INT’L TAX’N 28, 30 (2005).

⁴⁰ KLEINFELD, *supra* note 26, § 15.16(F).

⁴¹ *Id.*

⁴² Brown & Kaplan, *supra* note 39, at 30.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 31.

⁴⁶ OSBORNE & OSBORNE, *supra* note 16, at 280.

It is important to point out that although the beneficiaries must eventually pay those taxes, there is a significant time value of money benefit derived by deferring those taxes.⁴⁷ However, those deferred taxes are struck with anti-deferral and other applicable evolving rules discussed below.

i. History of Tax Legislation on Foreign Trusts

Tax law in the US is an ever-evolving area of legislation.⁴⁸ In fact, Congress frequently changes applicable tax law.⁴⁹ One constant however, is that US citizens who have assets in foreign trusts are subject to strict reporting requirements each year regarding their foreign trusts.⁵⁰ The IRS has explained that US citizens engage in abusive foreign trust schemes intending to circumvent the US income tax reporting requirements.⁵¹ In fact, many US citizens view using foreign financial institutions as a means of sheltering their assets.⁵² To counteract this, lawmakers keep a close eye on foreign transactions involving foreign trusts explaining why legislation is often changing.

Prior to Congress's intervention on foreign trusts, US citizens could use foreign trusts with the benefit of significant deferral of federal income taxes.⁵³ However, when US taxpayers used foreign trusts in a scheme to avoid US federal income taxes, lawmakers had to work to combat this abuse.⁵⁴ Congress first implemented the anti-deferral regime, namely, the throwback tax in 1954 for both domestic and foreign trusts.⁵⁵ This rule now only applies to foreign trusts and discourages taxpayers

⁴⁷ The time value of money in this instance refers to the idea that delaying a payment reduces its present economic cost.

⁴⁸ See KLEINFELD, *supra* note 26.

⁴⁹ *Id.*

⁵⁰ See **I.R.S.**, *Foreign Trust Reporting Requirements and Tax Consequences* (Apr. 3, 2025), <https://www.irs.gov/businesses/international-businesses/foreign-trust-reporting-requirements-and-tax-consequences> [<https://perma.cc/38KC-XST9>].

⁵¹ *Abusive Trust Tax Schemes – Facts (Section IV)*, I. R. S. (June 29, 2025), <https://www.irs.gov/businesses/small-businesses-self-employed/abusive-trust-tax-evasion-schemes-facts-section-iv> [<https://perma.cc/RM2P-2JSW>].

⁵² Scott St. Amand, *Should I Stay or Should I Go? The Erosion of the Offshore Asset Protection Trust and the Rise of Its Domestic Analogue*, 91 FLA. B.J. 18 (2017).

⁵³ MICHAEL A. HEIMOS, *PORTFOLIO 854-4TH: US TAXATION OF FOREIGN ESTATES, TRUSTS AND BENEFICIARIES* 23 (Bloomberg Law 2025).

⁵⁴ See *Abusive Trust Tax Schemes – Facts (Section IV)*, *supra* note 51.

⁵⁵ Daniel Knickerbocker, Jr., *Subchapter J – Throwback Rules (Portfolio 856)*, BLOOMBERG TAX, <https://pro.bloombergtax.com/portfolios/subchapter-j-throwback-rules-portfolio-856/#:~:text=First%20added%20to%20the%20tax,it%20were%20distributed%20to%20beneficiaries> [<https://perma.cc/8T96-QTBM>] (last visited Feb. 19, 2026).

from accumulating income in trusts and deferring payment of taxes thereon.⁵⁶ Additionally, Congress implemented the Tax Reform Act of 1976 as well as the Revenue Act of 1978.⁵⁷ These two pieces of legislation enacted tax penalties for US citizens who abused the use of foreign trusts to avoid paying US federal income taxes.⁵⁸ However, it remained clear that US taxpayers continued to find ways around paying the entirety of what they owed in US income taxes.⁵⁹ In 2001, the US General Accounting Office reported an increase in tax evasion and abusive tax strategies by US citizens.⁶⁰ These tax schemes consisted of domestic and foreign trust misuse, ultimately resulting in tens of billions of dollars lost for US Treasury.⁶¹ After the large amount of offshore trust tax abuse, lawmakers announced that combating abusive foreign trust schemes was the top priority.⁶²

In 2010, Congress implemented the Foreign Account Tax Compliance Act.⁶³ The Foreign Account Tax Compliance Act requires foreign financial and non-financial entities to report foreign assets held by US taxpayers.⁶⁴ It additionally requires US taxpayers to report their accounts and assets to the IRS.⁶⁵ In 2017, Congress introduced the Tax Cuts and Jobs Act thereby changing reporting requirements for both domestic and international business taxes.⁶⁶ While the Tax Cuts and Jobs Act mainly affected tax rates on a business's foreign earnings, it is relevant to see how Congress is constantly considering the existence of foreign assets.⁶⁷

⁵⁶ *Id.*

⁵⁷ HEIMOS, *supra* note 53, at 23.

⁵⁸ *Id.*

⁵⁹ See U.S. GOV'T ACCOUNTABILITY OFF., GAO-02-733, INTERNAL REVENUE SERVICE: EFFORTS TO IDENTIFY AND COMBAT ABUSIVE TAX SCHEMES HAVE INCREASED, BUT CHALLENGES REMAIN 2 (2002).

⁶⁰ *Id.* at 1.

⁶¹ *Id.* at 2.

⁶² *Id.*

⁶³ *Foreign Account Tax Compliance (FATCA)*, I.R.S. (Sept. 23, 2025), <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca> [<https://perma.cc/M6ES-2VHY>].

⁶⁴ *Id.*

⁶⁵ I.R.S., *Summary of FATCA Reporting for U.S. Taxpayers* (Mar. 13, 2024), <https://www.irs.gov/businesses/corporations/summary-of-fatca-reporting-for-us-taxpayers> [<https://perma.cc/82YP-4KM9>].

⁶⁶ *Tax Cuts and Jobs Act: A Comparison for Large Businesses and International Taxpayers*, I.R.S. (May 29, 2025), <https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-large-businesses-and-international-taxpayers> [<https://perma.cc/GH2G-2T65>].

⁶⁷ See *id.*

While the continuous updating of legislation is useful in understanding the seriousness in which the US considers foreign assets, tax reporting forms for foreign trusts are also continually updated.⁶⁸ US taxpayers who have a foreign trust must fill out an information return, called a Form 3520-A.⁶⁹ This form is updated and revised each year,⁷⁰ showing how meticulously the IRS treats foreign trusts.

ii. Current US Tax Consequences on a Foreign Trust

Just like domestic trusts, tax laws consider foreign trusts to be either grantor or non-grantor trusts.⁷¹ A foreign grantor trust typically exists when the grantor is a non-US citizen owning the trust, but the beneficiaries are US citizens.⁷² This means that the trust, still owned by the non-US grantor, is not subject to US income taxes.⁷³ Further, this arrangement typically means that the non-US grantor does not have assets subject to US estate tax within the trust, and thus when the grantor dies, US estate tax laws would not apply.⁷⁴ It is helpful to compare this concept to how domestic trusts are taxed in the US. Again, the grantor of a domestic grantor trust is responsible for all the US taxes on that trust.⁷⁵ However, in a domestic non-grantor trust, it is common that the trustee either pays the US federal income tax on the capital gains, or distributes the income to the beneficiary who then pays the tax.⁷⁶

A foreign grantor trust can also be set up by a US settlor intending to grant US beneficiaries the assets.⁷⁷ While that settlor who is a US citizen is required to report any income on their Form 1040, the foreign trust is not subject to the US income taxes.⁷⁸ Under this model, the trustee must file a Form 3520-A each year in addition to a Foreign Grantor Trust Owner

⁶⁸ See *Prior Year Forms and Instructions*, I.R.S. (Aug. 7, 2025), https://www.irs.gov/prior-year-forms-and-instructions?find=3520a&items_per_page=200&order=prior_year_products_picklist_revision_date&sort=desc [https://perma.cc/3CYS-DYDN].

⁶⁹ *Id.*

⁷⁰ See *id.*

⁷¹ Rokahr & Cockburn, *supra* note 14 at 423–24.

⁷² *Id.* at 424.

⁷³ *Id.*

⁷⁴ Shier & Diamond, *supra* note 5 at 2.

⁷⁵ KLEINFELD, *supra* note 26, § 15.16(F).

⁷⁶ ROKAHR & COCKBURN, *supra* note 14, at 424.

⁷⁷ DELOITTE, *U.S. Taxation and Information Reporting for Foreign Trusts and Their U.S. Owners and U.S. Beneficiaries* 1 (2019).

⁷⁸ *Id.* at 2.

Statement.⁷⁹ The Foreign Grantor Trust Owner Statement goes to US owners of the trust as well as any US beneficiary if they received an income distribution during that taxable year.⁸⁰ Any income generated from the trust itself—such as dividends, interest, annuities, and more—is taxed as income to the beneficiary.⁸¹

Foreign non-grantor trusts are commonly created when the grantor dies and can no longer retain control over the trust.⁸² However, foreign non-grantor trusts can also exist when the grantor is living.⁸³ This may occur when the settlor intends to endow assets to specific beneficiaries.⁸⁴ Under a foreign non-grantor model, income distributions to US beneficiaries may be taxed.⁸⁵ In fact, these US beneficiaries may be subject to tax from past years if the trust has compiled income from prior years without distributing it to the US beneficiaries.⁸⁶ As explained earlier, this tax is called the *throwback tax*.⁸⁷ The throwback tax issue is only a foreign trust issue, as US domestic trusts are not subject to the throwback tax.⁸⁸

A non-US tax issue, but an important one for other countries, is the wealth tax. The wealth tax is a tax on the wealth an individual owns.⁸⁹ It is often compared to a real property tax; however, a wealth tax may apply to assets other than real estate.⁹⁰ The goal is to focus on the wealth concentration of a few individuals and redistribute that wealth across areas

⁷⁹ *Id.* at 3.

⁸⁰ *Id.*

⁸¹ See KLEINFELD, *supra* note 26.

⁸² CARLYN S. MCCAFFREY, SHUDAN ZHOU & WILLIAM G. CAVANAUGH, Foreign Nongrantor Trusts for US Beneficiaries: Dos and Don'ts, 0 TR. & TRS. 1, 2 (2022).

⁸³ See Shier & Diamond, *supra* note 5.

⁸⁴ *Id.* at 5.

⁸⁵ Janette Saxer, *Solving Problems for US Beneficiaries of Foreign Trusts*, SCHRODERS WEALTH MGMT. 3 (Jan. 22, 2024), <https://www.schroders.com/en-us/us/wealth-management/insights/solving-problems-for-us-beneficiaries-of-foreign-trusts/> [<https://perma.cc/ND3X-L3PJ>].

⁸⁶ See ROKAHR & COCKBURN, *supra* note 14, at 429.

⁸⁷ *Id.*

⁸⁸ OSBORNE & OSBORNE, *supra* note 16.

⁸⁹ See Cristina Enache, *Wealth Taxes in Europe, 2024*, TAX FOUND. EUR. (Feb. 27, 2024), <https://taxfoundation.org/data/all/eu/wealth-taxes-europe-2024/> [<https://perma.cc/YH2K-ZLFT>].

⁹⁰ *Id.*

in need.⁹¹ While the US does not have a wealth tax,⁹² at least three European countries do, including Norway.⁹³

II. RULE AGAINST PERPETUITIES

Another prevalent issue in the discussion of foreign trusts is the Rule Against Perpetuities. The RAP stems from English law when wealthy landowners, who rented their land to tenants, attempted to keep the land in their family for as long as possible.⁹⁴ At the time, English courts favored the idea that property should be transferable.⁹⁵ Thus, to get around the courts' idea, landlords attempted to subject their property to "indestructible future contingent interests."⁹⁶ In response to these attempts, the RAP was created.⁹⁷

The RAP is a legal principle stating that "if an interest in real property does not vest within [twenty-one] years of life-in-being (life in existence) at the creation of the interest, then that interest in land is not good."⁹⁸ This rule is known to be complex⁹⁹ and requires abundant explanation. The basic explanation is that if a trust was written with the intention to make payments to a beneficiary who will not be born for another one-hundred years after such trust was written, that trust will be invalidated pursuant to the RAP.¹⁰⁰ Importantly, the RAP only applies to irrevocable trusts, because if a trust is revocable it is still subject to change.¹⁰¹ To determine whether a trust is valid pursuant to the RAP, one must consider the moment the trust was created.¹⁰² Whenever a grantor sets up a trust, that is the moment it is created.¹⁰³ Once the grantor creates

⁹¹ See M.R. Groff, *Keeping America: Wealth Concentration and the Need for Repaired Revenues and Basic Income*, 34 QUINNIPIAC PROB. L.J. 367, 396 (2021).

⁹² JANE HOLTZBLATT & GABRIELA GARRIGA, *TAXING WEALTH IN THE UNITED STATES: ISSUES AND CHALLENGES*, ii (Tax Pol'y Ctr., Urban Inst. & Brookings Inst., 2025).

⁹³ See ENACHE, *supra* note 89.

⁹⁴ *Use of a Foreign Trust to Avoid the New York Rule Against Perpetuities*, 29 ST. JOHN'S L. REV. 247 (1955).

⁹⁵ *Id.*

⁹⁶ *Id.* at 248.

⁹⁷ *Id.*

⁹⁸ *Rule Against Perpetuities*, LEGAL INFO. INST. (Apr. 2024), https://www.law.cornell.edu/wex/rule_against_perpetuities [<https://perma.cc/9WBK-3SXW>].

⁹⁹ Jack H.L. Whiteley, *Perpetuities in an Unequal Age*, 117 NW. U. L. REV. 1477, 1483 (2023).

¹⁰⁰ *Id.* at 1484.

¹⁰¹ CHRISTOPHER M. REIMER, *International Trust Domestication: Migrating an Offshore Trust to a U.S. Jurisdiction*, 25 QUINNIPIAC PROB. L.J. 170, 197 (2012).

¹⁰² Whiteley, *supra* note 99, at 1486.

¹⁰³ KLEINFELD, *supra* note 26, § 15.16(F).

the trust, one must consider the future vested date that the trustee will grant the beneficiary their interest.¹⁰⁴ If the future vested date, the date when the trust establishes that the beneficiaries receive the intended assets, is more than twenty-one years after the life of someone alive at the creation of the interest, the trust violates the RAP.¹⁰⁵

Scholars disagree about the effects of eliminating the RAP for domestic trusts in the US.¹⁰⁶ One argument is that the abandonment of the RAP will result in a few very wealthy groups of people.¹⁰⁷ On the other hand, some scholars argue that the abandonment of the RAP would not affect generational wealth because dynastic wealth would likely not grow at a sufficient enough rate to keep up with the number of descendants a trust has.¹⁰⁸ Wealthy families who create trusts in jurisdictions without the RAP in place are often called “dynastic trusts.”¹⁰⁹ These dynastic trusts are a way for wealthy Americans to ensure their descendants benefit from the trust for multiple generations.¹¹⁰ Without the RAP putting a limit on how far out one can create a trust, families are able to preserve their wealth indefinitely.¹¹¹ However, it is worth mentioning that some US state jurisdictions have altered their view of the traditional RAP.¹¹² For example, Wyoming has implemented its own “term of years” approach in its state law to allow a trust to “vest within 1,000 years of its creation.”¹¹³ However, jurisdictional issues may arise when bringing trusts from out of state into a state with more favorable trust legislation.¹¹⁴ For example, if a trust is created in a state with stricter RAP legislation, but the grantor moves that trust into a state with more favorable RAP legislation, the trust will likely be governed by the jurisdiction where the trust was established.¹¹⁵ Some grantors, however, have avoided this rule by moving

¹⁰⁴ See Reuben M. Payne, *The Rule Against Perpetuities and Its Application to a Private Trust*, 1 CLEV. ST. L. REV. 59, 63 (1952).

¹⁰⁵ *Id.*

¹⁰⁶ Whiteley, *supra* note 99, at 1493.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 1495.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See REIMER, *supra* note 101, at 195.

¹¹³ *Id.*

¹¹⁴ *Id.* at 196.

¹¹⁵ *Id.*

assets from one trust to another that is situated in a state more RAP friendly to them.¹¹⁶

III. RECENT LEGISLATION IN THE CAYMAN ISLANDS AND ITS EFFECT ON HIGH-NET-WORTH INDIVIDUALS

In 2024, the Cayman Islands' legislature implemented the Act, or as it is formally known, "The Perpetuities (Amendment) Act."¹¹⁷ The Act abolished the RAP in the Cayman Islands, allowing a foreign trust placed there to vest indefinitely.¹¹⁸ Prior to 2024, the Cayman Islands recognized the RAP, which required a trust to vest within 150 years.¹¹⁹ While the Cayman Islands has been a popular area to settle foreign trusts because of its extensive wealth protections,¹²⁰ the Act is predicted to enhance that popularity even more.¹²¹ This Part examines how high-net-worth individuals tend to structure their assets to best protect and maximize their wealth. An explanation of intergenerational wealth trends and the benefits of placing money in a jurisdiction without the RAP will be examined here.

A. INTERGENERATIONAL WEALTH

An annual survey examines attitudes surrounding high-net-worth individuals and their assets.¹²² In forming foreign trusts, there is a large connection between individuals with high assets and families with high assets.¹²³ In fact, in 2023, more than one-fourth of high-net-worth

¹¹⁶ *Id.*

¹¹⁷ Lindley, *supra* note 2.

¹¹⁸ *Id.*

¹¹⁹ Miller, *supra* note 1.

¹²⁰ *The Best Foreign Jurisdictions to Create an Offshore Trust 2023*, GOLDING & GOLDING (Feb. 19, 2026), <https://www.expatriationattorneys.com/the-best-foreign-jurisdictions-to-create-an-offshore-trust-2023/> [<https://perma.cc/RBP7-T3D5>].

¹²¹ Miller & Ebanks, *supra* note 1.

¹²² Flora Harley, *How are UHNWIs creating wealth in 2023?*, KNIGHT FRANK, <https://www.knightfrank.com/research/article/2023-03-01-how-are-uhnwis-creating-wealth> [<https://perma.cc/4QB4-G3C6>] (last visited Mar. 1, 2023).

¹²³ *See Possible Cross-Border Trusts to Consider for US or Canadian Beneficiaries*, RBC WEALTH MANAGEMENT, <https://www.rbcwealthmanagement.com/en-asia/insights/possible-cross-border-trusts-to-consider-for-us-or-canadian-beneficiaries> [<https://perma.cc/WT4Q-JZ2X>] (last visited Feb. 19, 2026).

individuals' income was held outside the country in which they resided.¹²⁴ High-net-worth individuals have sought mobility at an increasing rate since the COVID-19 pandemic.¹²⁵ COVID-19 allowed individuals to work abroad, increase their digital presence, and overall be more mobile.¹²⁶ It appears as if this physical mobility led individuals to also mobilize their assets.¹²⁷

Since the pandemic, high-net-worth individuals have increasingly looked to make smart moves with their global assets. In fact, in 2023, US high earners stated their number one goal for their wealth was preservation.¹²⁸ This increased global mobility shows a theme that high-net-worth individuals strive to diversify and stretch their income to best benefit and increase their assets.¹²⁹

B. THE ABANDONMENT OF THE RULE AGAINST PERPETUITIES IN THE CAYMAN ISLANDS

The Cayman Islands Parliament passed the Act on August 22, 2024.¹³⁰ The Act abolished the Rule Against Perpetuities for trusts existing in the Cayman Islands.¹³¹ This means that a grantor of a trust in the Cayman Islands may now deed a trust even if that trust cannot vest within twenty-one years after it was created.¹³² In other words, the trust can last indefinitely in the Cayman Islands without vesting to a beneficiary.¹³³ The Cayman Islands intended this legislative change to cater towards global individuals and families structuring trusts in the Cayman Islands.¹³⁴

¹²⁴ In the context of this Comment, a high-net-worth individual refers to someone who has over \$1 million in liquid assets and who requires tailored financial planning services; Harley, *supra* note 122.

¹²⁵ KNIGHT FRANK, *The Wealth Report*, 10 (17th ed. 2023) <https://content.knightfrank.com/resources/knightfrank.com/wealthreport/2023/the-wealth-report-2023.pdf> [<https://perma.cc/AZ6P-863L>].

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 9.

¹²⁹ *Id.* at 10.

¹³⁰ Miller, *supra* note 1.

¹³¹ Monique Bhullar, Lucy Diggle, Chloe Haddow & Thea Maitland, *Cayman Abolished Rule Against Perpetuities*, JD SUPRA (Aug. 6, 2024), <https://www.jdsupra.com/legalnews/cayman-abolishes-rule-against-3023279/> [<https://perma.cc/8FNT-YNMS>].

¹³² *Rule Against Perpetuities*, LEGAL INFO. INST. (Cornell L. Sch.), https://www.law.cornell.edu/wex/rule_against_perpetuities [<https://perma.cc/Q9XP-KP97>].

¹³³ See Bhullar et al., *supra* note 131.

¹³⁴ *Id.*

The Act gives trusts in the Cayman Islands, created after August 22, 2024, the ability to opt out of the RAP constraints.¹³⁵ If a grantor created trust prior to August 22, 2024, it is still subject to the RAP.¹³⁶ However, a Cayman Islands trust created prior to the Act can still “disapply” RAP constraints against it.¹³⁷ To accomplish this, the trust must go through an application process with the Cayman Islands Grand Court.¹³⁸ If approved, that existing trust can now bypass any RAP constraints and may vest indefinitely.¹³⁹

IV. OVERALL EFFECTS AND CONSEQUENCES ON TRUSTS UNDER THE NEW LEGISLATION

Considering whether a wealthy US family may benefit financially from creating a trust in the Cayman Islands under this abandoned RAP model requires analysis into multiple aspects of trust and tax law. Overall, the Cayman Islands may allow a wealthy US family to transfer wealth into a safe trust and vest it far into the future for future familial generations to benefit. Eventually, however tax consequences will apply to even the furthest vesting trust. Considering this model on a basic level, a foreign trust in the Cayman Islands, with this new legislation in place, allows a wealthy family to keep assets in their family forever. Even when the settlor of the trust dies, there are no immediate effects and the trust becomes irrevocable by vesting to the beneficiaries indefinitely.¹⁴⁰

When a person designates their assets to a foreign trust, one strategy is to put all the assets into foreign investments.¹⁴¹ In doing so, the settlor of the trust avoids responsibility to pay US income taxes when that trust experiences a gain.¹⁴² Because of this, foreign grantor trusts are labeled as “transparent for US income tax purposes.”¹⁴³ Considering this, the abandonment of the RAP appears to be a great benefit and a straightforward way for wealthy US families to keep assets, even those still growing, in the family forever. If we look no further than this simple

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Miller, *supra* note 1.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Shier & Diamond, *supra* note 5, at 4.

¹⁴¹ Brown & Kaplan, *supra* note 39, at 31.

¹⁴² *Id.*

¹⁴³ MCCAFFREY ET AL., *supra* note 82.

idea, it seems as if a foreign trust in the Cayman Islands may now exist indefinitely, without being subject to US income taxes—a seemingly obvious path for wealthy US citizens looking to set aside protected assets.

However, US families and individuals who have the means to create foreign trusts need to know the ins and outs of a long-lasting Cayman Islands dynastic trust. Congress has combatted this basic model of foreign trusts by ensuring that dynasties cannot be fabricated so easily by utilizing jurisdictions without the RAP in place, like the Cayman Islands. With strict tax regulations in place like the throwback tax, the financial benefit from vesting large foreign trusts far into the future are minimal and US citizens cannot currently recognize a great benefit by vesting their assets far into the future.

A. TAX CONSEQUENCES ON A US CITIZEN WHO CREATES A FOREIGN TRUST IN THE CAYMAN ISLANDS.

Lawmakers have been keeping close watch on transactions involving foreign trusts owned by US citizens.¹⁴⁴ So much so, Congress has crafted laws to prevent foreign trusts with US beneficiaries from generating income that benefits those beneficiaries and avoids US income tax.¹⁴⁵ The main hurdle US citizens face when attempting to use foreign trusts for financial gain is the inevitable throwback tax.¹⁴⁶ Finding loopholes around paying US taxes on income distributions of these large assets that individuals placed overseas has been a common practice since the late 1990s.¹⁴⁷ This analysis reviews some of the considerations pertaining to foreign trusts. It also tackles the issue of how US citizens will still not experience substantial income tax benefits from placing assets in a Cayman Islands trust, despite the removal of the RAP there.

i. US Income Tax

If a US citizen settles a trust in the Cayman Islands, the trust may be vested far into the future intending to benefit future generations. The

¹⁴⁴ *United States – IRS Issues Foreign Trusts and Gifts Reporting Rules, GMS Flash Alert 2024-104*, KPMG (May 7, 2024), <https://kpmg.com/xx/en/our-insights/gms-flash-alert/flash-alert-2024-104.html>.

¹⁴⁵ Rokahr & Cockburn, *supra* note 14, at 424.

¹⁴⁶ *Id.* at 429.

¹⁴⁷ *Transactions with Foreign Trusts and Information Reporting on Transactions with Foreign Trusts and Large Foreign Gifts*, 89 FED. REG. 39440 (May 8, 2024).

US settlor of this foreign trust may decide to make this trust a grantor or a non-grantor trust for tax reasons. Assuming the settlor creates a foreign non-grantor trust in the Cayman Islands, financial benefits may arise for that settlor, but the settlor will likely leave its beneficiaries with high tax consequences.¹⁴⁸ While the settlor can contribute assets to the trust without paying tax on income and gain generated from the assets, that obligation to income taxes does not vanish forever.¹⁴⁹ With no single taxpayer holding sole control over the trust, a foreign non-grantor trust is treated as its own taxable entity.¹⁵⁰ Being its own taxable entity gives the foreign trust its own tax liabilities,¹⁵¹ akin to individual taxpayers. While the contributions or income generated are not taxed as income at the time they are added into the trust, they are a liability carried over to the next person in “control” of those assets.¹⁵² While the grantor avoids tax liability for themselves and can generate income through the trust tax-free, their beneficiaries will incur the tax when they try to reap any benefit from the assets set up for them. This scenario is called a “throwback tax,”¹⁵³ and it prevents any loophole from being used to avoid paying US income tax through the use of a foreign trust.

If the settlor instead chooses to make the trust a grantor trust rather than a non-grantor trust, the settlor will still be liable for the taxes. In the case of a grantor trust, the grantor retains control over the trust and thus the trust is taxed as the grantor’s own tax liability.¹⁵⁴ Further, the grantor must report any income the trust accumulated.¹⁵⁵ The grantor is then liable for any income tax based on the accumulated trust income.¹⁵⁶ As a result, whether the settlor remains in control of the trust or lets control vest completely within its beneficiaries, someone will have to pay tax on the income generated by the foreign trust. Despite the Cayman Islands abandoning the RAP, this may only delay US income tax consequences. A foreign trust in the Cayman Islands will not completely get around the responsibility of either the settlor or the beneficiary to pay US income taxes.

¹⁴⁸ See OSBORNE & OSBORNE, *supra* note 16, at 301.

¹⁴⁹ *Id.*

¹⁵⁰ Shier & Diamond, *supra* note 5.

¹⁵¹ *See id.*

¹⁵² *See* Osborne & Osborne, *supra* note 16, at 301.

¹⁵³ Rokahr & Cockburn, *supra* note 14 at 429.

¹⁵⁴ *Id.* at 424.

¹⁵⁵ Osborne & Osborne, *supra* note 16 at 301.

¹⁵⁶ *US Taxation and Information Reporting for Foreign Trusts and their US Owners and US Beneficiaries*, *supra* note 77, at 3.

ii. *Wealth Tax*

The Cayman Islands may be appealing to a person living in a country with a national wealth tax. A wealth tax attempts to tax the entire net worth of those with an extremely high wealth concentration.¹⁵⁷ While there are coherent arguments for implementing this in the US, it has not been implemented as of writing. However, seven European countries have implemented either a full net wealth tax, or a wealth tax on certain assets.¹⁵⁸

Since 1892, Norway has imposed a wealth tax¹⁵⁹ on individuals whose wealth reaches a certain threshold.¹⁶⁰ To illustrate the wealth tax, Norwegian individuals have a certain percentage of their wealth taxed, depending on how much wealth they possess.¹⁶¹ At one point, the tax percentage was increased, resulting in wealthy Norwegians leaving the country.¹⁶² This type of billionaire flight shows the incentive that high-net-worth individuals have in shielding their assets from taxes.

If the US had a wealth tax, high-net-worth individuals would likely benefit from placing large assets in trusts in the Cayman Islands because it could be vested indefinitely and avoid a yearly wealth tax on idle assets. Instead, that high-net-worth individual would only have to pay income tax on any contributions and could shift that income tax liability to the beneficiaries. Since the US does not have a wealth tax, a US citizen would not obtain any benefit in avoiding a tax on their assets, since they are not being taxed on their idle net worth. The lack of a wealth tax in the US is another reason that the Act will likely not result in much of a tax benefit for high-net-worth US individuals.

¹⁵⁷ M.R. Groff, *Keeping America: Wealth Concentration and the Need for Repaired Revenues and Basic Income*, 33 QUINNIPAC PROB. L.J. 367, 369 (2021).

¹⁵⁸ Enache, *supra* note 89.

¹⁵⁹ Christina Enache, *The High Cost of Wealth Taxes*, TAX FOUND. EUR. (June 26, 2024), <https://taxfoundation.org/research/all/eu/wealth-tax-impact/#:~:text=Net%20Wealth%20Taxes%20in%20Europe&text=Norway's%20net%20wealth%20tax%20dates,tax%20rate%20is%201.1%20percent> [https://perma.cc/3C7L-QDN5].

¹⁶⁰ *Worldwide Tax Summaries: Norway*, PWC (Aug. 13, 2024), <https://taxsummaries.pwc.com/norway/individual/other-taxes> [https://perma.cc/3MVV-KEGE].

¹⁶¹ *Id.*

¹⁶² Enache, *supra* note 159.

iii. *Proposed Treasury Regulations*

The US Treasury has issued proposed regulations on those engaging in foreign trust transactions, as well as those receiving large foreign gifts.¹⁶³ These regulations are used to combat against US citizens who attempt to avoid paying US income and gift taxes so their financial benefit for the taxable year ultimately increases.¹⁶⁴ As previously discussed, lawmakers are continually amending foreign trust guidelines to combat tax evasive conduct in this area. It is therefore not surprising that on May 7, 2024, Treasury proposed new and amended regulations for foreign trusts.¹⁶⁵ The relevant portions of these regulations discuss foreign gifting provisions, as well as grantor requirements for reporting foreign trust transactions.¹⁶⁶

Within the grantor requirements, Treasury explains there is a history of US citizens using foreign trusts to transfer large assets for tax evasion purposes.¹⁶⁷ In 1996, Treasury implemented regulations on foreign trusts and gifts, thereby granting the IRS the ability to investigate US citizens transactions and ownership of foreign trusts.¹⁶⁸ Treasury's immediate response to tax evasion points toward lawmakers' knowledge that wealthy US citizens use foreign jurisdictions as a tool to make the best financial decision for themselves. Over time, lawmakers have implemented an abundance of regulations with the common goal of minimizing loopholes for US taxpayers to evade their US taxes. Even as of writing, Treasury continues to propose additional regulations with the same intention.¹⁶⁹

Under current regulations, if a US citizen receives a gift from a foreign citizen in a calendar year exceeding \$100,000, that gift must be

¹⁶³ *United States – IRS Issues Foreign Trusts and Gifts Reporting Rules, GMS Flash Alert 2024-104*, *supra* note 144.

¹⁶⁴ Martha Waggoner, *Foreign Trust Transactions and Large Gifts Addressed in Proposed Regs.*, J. ACCT. (May 8, 2024), <https://www.journalofaccountancy.com/news/2024/may/foreign-trust-transactions-and-large-gifts-addressed-in-proposed-regs.html> [<https://perma.cc/E6YL-789H>].

¹⁶⁵ *United States – IRS Issues Foreign Trusts and Gifts Reporting Rules, GMS Flash Alert 2024-104*, *supra* note 144.

¹⁶⁶ Waggoner, *supra* note 164.

¹⁶⁷ *Transactions with Foreign Trusts and Information Reporting on Transactions with Foreign Trusts and Large Foreign Gifts*, *supra* note 147.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* (explaining the purpose of the additional regulations); *see also* Waggoner, *supra* note 164 (showing how even as late as 2024 the Treasury was proposing new regulations).

reported on a 3520 form.¹⁷⁰ Under the proposed regulations, this \$100,000 will be modified to account for inflation.¹⁷¹ This means, if the rate of inflation increases in a year, the exclusion may increase, allowing a gift over \$100,000 to be excluded from reporting. Thus, while the proposed regulations may account for some wiggle room for larger gifts, reporting will still be required for extremely large gifts. Under both current and proposed regulations, this proposed reporting modification is a means of combating US taxpayers who abuse this tax evasive loophole. Without a gift reporting requirement for US taxes, a foreign individual could gift an amount from a foreign trust to the intended US individual, instead of that trust naming the US individual as a beneficiary. Since gifts are excluded from US income tax, the US recipient would not have to report the gift. However, by requiring foreign gifts to be reported to the IRS, US citizens cannot use this method to get around reporting this type of financial gain.

US citizens have also attempted to structure certain payments from foreign trusts as “loans” to side-step US tax reporting.¹⁷² These “loans” were made because distributions would trigger the anti-deferral rules of the throwback tax regime.¹⁷³ Within the proposed rules, Treasury sets forth a broader definition of what constitutes a “distribution” from a foreign trust.¹⁷⁴ Specifically, a “loan of cash or marketable securities from a foreign non-grantor trust, made to a US person who is either a grantor or beneficiary of the foreign trust, will be treated as a distribution...”¹⁷⁵ While the proposed regulations include some exceptions to the general rule,¹⁷⁶ the exceptions do not encompass a wide array of taxpayers or situations, causing little change to the already-known distribution rules surrounding loans.¹⁷⁷ Since the proposed regulations will not significantly

¹⁷⁰ *United States – IRS Issues Foreign Trusts and Gifts Reporting Rules*, GMS Flash Alert 2024-104, *supra* note 144.

¹⁷¹ *Transactions with Foreign Trusts and Information Reporting on Transactions with Foreign Trusts and Large Foreign Gifts*, *supra* note 147; *IRS Issues Proposed Foreign Trust Regulations*, WOLF & CO., P.C. (June 14, 2024), <https://www.wolfandco.com/resources/insights/irs-issues-proposed-foreign-trust-regulations/> [<https://perma.cc/3QBF-CRY2>].

¹⁷² *Transactions with Foreign Trusts and Information Reporting on Transactions with Foreign Trusts and Large Foreign Gifts*, *supra* note 147.

¹⁷³ *See id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Jennifer A. Brittenham, *Proposed Regulations Would Expand Guidance on Foreign Trusts and Large Foreign Gifts*, ERNST & YOUNG LLP (May 17, 2024), <https://taxnews.ey.com/news/2024-1008-proposed-regulations-would-expand-guidance-on-foreign-trusts-and-large-foreign-gifts> [<https://perma.cc/3QBF-CRY2>]; *Transactions with Foreign Trusts and Information Reporting on Transactions with Foreign Trusts and Large Foreign Gifts*, *supra* note 147.

¹⁷⁷ *See Brittenham*, *supra* note 176.

change the existing rules, it is still relevant to consider the loan regulations as currently written without giving consideration to future regulations. By classifying this “loan” a distribution, it prevents a US citizen from facing the immediate tax implications related to the distributed sum of money. Thus, the Act has no benefit against this rule because even if the money is vested indefinitely and ultimately labelled as a loan when given to the beneficiaries, it will still be a distribution for tax purposes. Regardless of how far into the future the assets are vested, a loan to a beneficiary will still be a distribution to the beneficiary and they will have to report any income from that distribution as taxable income for that year—countering any deferral benefit because of the throwback tax.

B. SECURITY BENEFITS FROM THE NEW LEGISLATION IN THE CAYMAN ISLANDS.

While lawmakers have implemented an abundance of tax statutes and regulations combatting loopholes used by US Citizens with foreign trusts, the abandonment of RAP in the Cayman Islands provides some security-based benefits which must be weighed against the drawbacks of tax regulations US citizens face.

Because US citizens seem to face persistent taxation on any benefit gained from their foreign trust, a large income tax benefit from creating a trust in the Cayman Islands is unlikely. However, this legislation is still alluring for wealthy families. While the tax benefits of a Cayman Islands trust may be no better than a US trust, the Cayman Islands provides a certain indefinite security. This security ensures future generations of a family have access to wealth situated in a trust.¹⁷⁸

An indefinite trust may accumulate capital over a very long period allowing the trust to build interest and grow over an indefinite period of time.¹⁷⁹ A trust established in a jurisdiction with the RAP may only generate income if the trust is legally allowed to be vested pursuant to the RAP.¹⁸⁰ While the trust may accumulate income virtually forever, remember that any income generated by the trust is taxable income to the beneficiaries of a non-grantor trust.¹⁸¹

¹⁷⁸ Whiteley, *supra* note 99, at 1494.

¹⁷⁹ *Id.* at 1495–96.

¹⁸⁰ See Payne, *supra* note 104, at 63–64.

¹⁸¹ See Whiteley, *supra* note 99, at 1512–17.

Families may find security in the fact that a trust set up in the Cayman Islands can be constrained from disbursing to certain generations.¹⁸² In a jurisdiction where the RAP is enforced, beneficiaries may be forced to inherit the assets within the trust before they reach the preferred age or maturity to make advantageous decisions with the inherited assets. If the trust vests indefinitely, the family will not have to worry about inheritances kicking in at a specific time. While this is a valid concern for trusts in jurisdictions governed by RAP, there are tools to ensure beneficiaries spend carefully.¹⁸³

Drafting the trust document is a good place to start to ensure such supervisory tools are implemented. First, the grantor may advise the trustee of specific requirements the grantor wishes to be carried out when their assets are distributed.¹⁸⁴ For example, a grantor may require that a beneficiary may only receive a distribution if that distribution will be used for educational purposes.¹⁸⁵ Additionally, a grantor may set up a discretionary trust.¹⁸⁶ A discretionary trust is one in which the grantor created the trust to allow the trustee discretion in distributing assets to the beneficiary.¹⁸⁷ This type of arrangement gives the trustee some entitlement over the trust, and is dependent on what the grantor's wishes were at its creation.¹⁸⁸ These options make it clear that individuals in jurisdictions with the RAP in place have tools to avoid haphazardly dispersing trust assets in an effort to dispose of the trust before the RAP period ends.

Thus, while trusts in jurisdictions like the Cayman Islands have immediate security benefits, tax consequences will eventually still arise under this trust model. Additionally, while it may be beneficial to withhold distributions from beneficiaries for an indefinite period, jurisdictions still recognizing the RAP have tools to ensure similar asset-withholding benefits for beneficiaries.

Although US citizens may find financial security by placing assets in a Cayman Islands foreign trust, there will not be a direct income tax

¹⁸² See *id.* at 1495–96.

¹⁸³ *Helping Beneficiaries Manage Trust Fund Money*, ALTMAN & ASSOCS., <https://altmanassociates.net/helping-beneficiaries-manage-money/> [https://perma.cc/58RW-RFUQ] (last visited Nov. 20, 2024).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Thomas G. Opferman & Charles A. Redd, *Discretion: You May Not Have What You Think You Have*, in ALI-ABA Course of Study: Representing Estate and Trust Beneficiaries and Fiduciaries 65, 70 (2011).

¹⁸⁷ *Id.* at 69.

¹⁸⁸ *Id.* at 69, 72.

benefit through this financial planning strategy. Instead, US citizens can be assured that they will have money in this trust for an indefinite period. This provides the beneficiaries a sense of financial stability with assets set aside for as long as intended by the grantor; however, it can be argued that this is not providing a financial benefit for anyone. In fact, the beneficiaries may not have tangible access to these funds in their lifetime, providing them no gain at all. Even when beneficiaries are allowed to access assets from a foreign trust, they are taxed on the distributions as gross income.¹⁸⁹ This tax greatly affects any income the beneficiary receives from the trust counteracting any financial benefit they could receive from a foreign trust. The main benefit of using a Cayman Islands foreign trust is the security benefit it provides. This security benefit does not necessarily coincide with a tax benefit for beneficiaries, and it should not be confused as such by those setting up a foreign trust. Abandoning the RAP in the Cayman Islands may attract a greater amount of wealthy international individuals, however, US citizens will still be taxed on the trust assets at some point and should only pursue this plan to secure their finances or assets over a long period of time.

V. PRACTICAL INSIGHTS: THE ACT AND REAL-WORLD EXAMPLES

To understand why the Act will not substantially increase financial benefits for US taxpayers, consider the two different high-net-worth individuals mentioned in the Introduction: one from the US and one from Norway. Both high-net-worth individuals intend to set up a Cayman Islands foreign trust and are interested in vesting their assets indefinitely, while also benefitting financially from this foreign trust. Even if both families set up identical trusts in the Cayman Islands, their home country's tax laws affect the financial benefit, if any, they will receive.

Consider first the high-net-worth individual in Norway. This individual may be drawn to set up a trust in the Cayman Islands due to the abandonment of the RAP and the reputation the country has for being a secure place to hold assets.¹⁹⁰ Due to these perks, the Norwegian individual will choose to set up an irrevocable trust in the Cayman Islands intending it to vest into the future for her family. Because Norway has a wealth tax,¹⁹¹ if the individual set up a trust to stay in Norway, those assets

¹⁸⁹ KLEINFELD, *supra* note 26, at 37.

¹⁹⁰ OSBORNE & OSBORNE, *supra* note 16, at 27–280.

¹⁹¹ *Norway*, PWC WORLDWIDE TAX SUMMARIES (Jan. 20, 2026), <https://taxsummaries.pwc.com/norway/individual/other-taxes> [<https://perma.cc/3HPK-YVJS>].

would be subject to the net wealth tax. However, by placing these assets in the Cayman Islands, the individual, or her beneficiaries, would not have to pay a wealth tax on the trust assets. Assuming this trust contains a high-value amount of assets, this decision would result in a significant financial benefit to the Norwegian individual. Without yet considering the ability to get around the RAP constraints, the Cayman Islands already seems like a beneficial jurisdiction within which to set up the trust. Additionally, if the Norwegian individual considers the ability to vest this tax-free trust indefinitely into the future, she can set aside this large asset(s), have it grow through other means while in the trust, and ensure her family can access the trust on a chosen timeline. While the beneficiaries of this irrevocable trust may be subject to income taxes when the trust assets are distributed to them, they will have avoided the Norwegian wealth tax for a long period. Depending on the Norwegian individual's wealth and how much of a tax she would face if it were kept in a Norwegian trust, placing the assets in a Cayman Islands foreign trust would likely result in a significant financial benefit as well as offer a loophole for avoiding paying the Norwegian wealth tax.

Now, consider a high-net-worth individual in the US wishing to set up a trust in the Cayman Islands to take advantage of the Act. To determine whether the US individual would obtain a tax benefit, the US tax law discussed above must be applied to her scenario. The US individual explains that she has no interest in modifying the trust and would only like to set aside the assets for future familial generations while simultaneously building the value of the trust until it is distributed. This individual's goals can be achieved by placing her trust in the Cayman Islands; however, it is worth considering whether she could instead establish the trust within the US and reach those same goals without a different tax outcome. For many individuals, the Cayman Islands seems like a *tax haven*—and for some countries' citizens it can be immensely beneficial to avoid federal taxes in this way. But this US individual should consider US tax law and the similar financial outcome she and her beneficiaries may face if they keep the trust domestic.

If the US individual sets up the irrevocable trust in the Cayman Islands, the trust will benefit from the fact that it can vest indefinitely because of the Act. However, some US states have opted to remove the state RAP and allow trusts established in those states to vest greater than twenty-one years of life in being at the creation of interest.¹⁹² For example,

¹⁹² REIMER, *supra* note 101, at 195.

South Dakota and Delaware have both opted to completely abandon the RAP, thereby allowing a trust to vest indefinitely within the US.¹⁹³ Additionally, Wyoming, Alaska, and Florida have all placed a 1,000-year limit on the duration of a trust.¹⁹⁴ Knowing this information gives the US citizen some flexibility if moving assets abroad is not something she is completely comfortable with. She may, however, wonder if she would be forgoing a significant financial benefit by not having to pay as much in taxes if the trust is kept within the US.

In answering her question, it is important to consider all taxes she may be subject to under each model. Unlike Norway, the US does not have a wealth tax. This means that if the US individual places her assets in a Cayman Islands trust, she would not benefit from a lesser tax on her net worth. She would not be taxed by the US for simply having those assets, nor would she be taxed on them in the Cayman Islands. So, she would not receive a tax benefit related to this aspect of the foreign trust.

Next, although the individual herself will not be a beneficiary of her irrevocable trust, members of her family will be, and she wants them to have the fewest tax consequences and the greatest possible financial benefit. Assuming the trust will be set aside for multiple years in the Cayman Islands building income through interest, dividends, and other sources, that income will not come without consequences to the US beneficiaries. As described earlier, the IRS applies the income tax to all sources of income a US taxpayer may have, including trust distributions.¹⁹⁵ In this case, imagine that the irrevocable trust is set up in the Cayman Islands for a perpetual period and the US individual plans to invest the assets in different areas to constantly build their value. Because the US does not have an inheritance tax,¹⁹⁶ the amount of assets originally placed in the trust for the future beneficiaries will be tax-free. However, because the assets will be generating income while in the trust, the beneficiaries will have to recognize the gain on the trust assets as taxable income.¹⁹⁷

¹⁹³ *Id.* at 200.

¹⁹⁴ *Id.*

¹⁹⁵ KLEINFELD, *supra* note 26, at 37.

¹⁹⁶ Elizabeth McNichol & Samantha Waxman, *State Taxes on Inherited Wealth*, CTR. ON BUDGET & POL'Y PRIORITIES (June 17, 2021), <https://www.cbpp.org/research/state-budget-and-tax/state-taxes-on-inherited-wealth> [<https://perma.cc/Z8R7-5Y2K>].

¹⁹⁷ *Instructions for Form 1041 and Schedules A, B, G, J, and K-1 (2025)*, I.R.S. (2025), https://www.irs.gov/instructions/i1041#en_US_2025_publink1000285926 [<https://perma.cc/Y6BU-LLSF>].

The taxable gain from an irrevocable trust in the Cayman Islands would be the same if the trust was situated as a domestic trust in the US. This is because the income generated will still be subject to US income tax once the beneficiaries receive such amounts. Thus, it is important for the US individual to know that, despite the benefits of a trust in the Cayman Islands, the IRS will still consider a distribution from a growing trust to be a gain in income to a US citizen. As a result, the US citizen would transfer the same US income tax consequences to her beneficiaries whether the trust is domesticated or placed offshore in the Cayman Islands. While her beneficiaries may benefit by keeping the trust in the family indefinitely, that only allows the trust to grow more throughout the years. Ultimately, this may increase the taxable income the beneficiary will receive through a distribution later on.

If vesting the trust indefinitely is a top priority for the US individual, understanding that vesting assets for an undefined period will not grant the beneficiaries or the grantor any tax benefit is important. What happens instead is that it allows for some security for the assets by ensuring they remain in the family. It is important to keep in mind that the US has progressed in terms of the longstanding RAP and several states have abandoned it or extended the time frame just as the Cayman Islands have done. Although individuals in jurisdictions like Norway may recognize a significant tax benefit by avoiding a wealth tax through the creation of a foreign trust in the Cayman Islands, due to tax structures, a US citizen would not have the same benefits.

US lawmakers have for too long understood US taxpayers' yearning to bypass taxes. Because of this understanding, rules and regulations are continually updated and implemented by lawmakers to ensure there is no clear, legal loophole to avoid paying US income taxes. Strategic planning can help to obtain the best financial outcome, but placing a foreign trust indefinitely in the Cayman Islands is not likely to have any substantial tax or financial benefit for US taxpayers.

VI. CONCLUSION

One appealing aspect of trusts is they allow US taxpayers to organize large assets in a manner not requiring a beneficiary to pay estate or gift taxes on distributions. Trusts allow income taxes to be deferred until the beneficiary receives the increased-in-value asset. With that in mind, trusts are a significant tool for high-net-worth individuals seeking to leave assets to their family members and avoid major tax consequences. US

trusts exist under the RAP, requiring that trust to vest within twenty-one years after the death of someone alive at the creation of the trust.¹⁹⁸ This means the grantor of the assets in a trust can only defer the income tax consequences on those assets for the perpetuity period.

When the Cayman Islands abandoned the RAP in August 2024,¹⁹⁹ it may have seemed that this would create a significant tax benefit for US taxpayers. However, US lawmakers implemented an abundance of rules and regulations preventing US taxpayers from recognizing a significant tax benefit from creating a Cayman Islands foreign trust.²⁰⁰ Because the RAP has been altered, or even completely removed in some states, the Act in the Cayman Islands does not create a significant tax benefit compared to the outcome taxpayers would face using a domestic trust.

While individual asset and tax planning should be considered on a case-by-case basis, this Comment explains the extensive income tax consequences individuals may face regardless of where their trust is placed in the world. If the assets are distributed to a US taxpayer, Congress has seemingly found a way to ensure those assets will be taxed. When planning for asset transfers, all tax consequences should be accounted for and strategized accordingly. But the federal income tax is one of the most heavily regulated taxes by the IRS²⁰¹ and often requires deeper analysis.

To conclude, if the US taxpayer is seeking asset planning assistance solely to circumvent heavy taxes, the Act in the Cayman Islands will not provide that type of tax haven. Despite the Act in the Cayman Islands, due to the extent of the US tax regulations and the progressive view towards the RAP, US taxpayers should not be enticed into placing assets into a trust in the Cayman Islands solely for a tax benefit.

¹⁹⁸ Payne, *supra* note 104.

¹⁹⁹ Miller, *supra* note 1.

²⁰⁰ *Foreign Trusts*, in ASSET PROTECTION: LEGAL PLANNING, STRATEGIES AND FORMS, THOMSON REUTERS TAX AND ACCOUNTING 1,1 (Nov. 2024).

²⁰¹ See I.R.S., *Foreign Trust Reporting Requirements and Tax Consequences* (Apr. 3, 2025), <https://www.irs.gov/businesses/international-businesses/foreign-trust-reporting-requirements-and-tax-consequences> [<https://perma.cc/38KC-XST9>].