

Foreign Trust Transition Planning: Distributions to Beneficiaries, Trust Restructuring, Reporting Requirements

Grantor to Nongrantor Trust Tax Implications, DNI, Accumulation of Trust Income, Throwback Tax, Planning Techniques

TUESDAY, OCTOBER 13, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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Foreign Trust Transition Planning Appendices

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Appendix A: Foreign Trusts Examples

1. Foreign Trust:

- Pursuant to the Trust instrument, Jersey Channel Islands law is the applicable governing law of the Trust and the Trustee is a trust company or individual resident in Singapore
- The trust fails both the court and control test because a U.S. court has no authority since the governing law is the Jersey Channel Islands and the trustee is foreign

2. Foreign Trust:

- Pursuant to the Trust instrument, Wyoming law is the applicable governing law of the Trust and the Trustee is a trust company or individual resident in New Zealand
- Though the Trust meets the court test as a result of the Trust being subject to Wyoming law, it fails the control test because the trustee is foreign. Therefore, the Trust is foreign because it fails the control test.

NOTE: THE TRUST MUST MEET BOTH TESTS TO BE TREATED AS A U.S. TRUST!

Appendix A: Foreign Trusts Examples

1. U.S. Trust:

- Pursuant to the Trust instrument, Delaware law is the applicable governing law of the Trust. There are three trustees, a Delaware trustee and two U.S. trustees. Trust decisions require a majority of the trustees approval.
- The Trust meets both court and control tests as a result of being subject to U.S. law because the Trust is governed by Delaware law; and meets the control test because U.S. trustees, by way of majority approval, control the substantial decisions of the Trust.

2. U.S. Trust:

- Pursuant to the Trust instrument, Wyoming law is the applicable governing law of the Trust and the trustee is a Wyoming trustee.
- The trust is U.S. because it meets both the court and control tests as a result of being subject to Wyoming law and the trustee being U.S.

Appendix B: Foreign Grantor Trust Examples

1. A trust which is governed under the laws of New Zealand with a Bahamian trustee which is revocable by the settlor
2. Same facts as example 1 above except trust is irrevocable and the only persons receiving distributions are the settlor and the settlor's spouse during the settlor's life.

NOTE: UPON THE SETTLOR'S DEATH OR INCAPACITATION OF A REVOCABLE TRUST, THE TRUST BECOMES IRREVOCABLE AND IS TREATED AS A FOREIGN NONGRANTOR FROM THAT POINT FORWARD

Appendix C: Foreign Nongrantor Trust Examples

1. A trust which is governed under the laws of New Zealand with a Bahamian trustee which is irrevocable and persons receiving distributions are the settlor and the settlor's children.
2. A trust which is governed by the laws of the South Dakota and has a U.S. and Bahamian trustee with equal powers over trust administration and the Trustee has made a distribution to one of the settlor's children even though the Trust agreement / instrument states that only the settlor or the settlor's spouse are to receive distributions during the settlor's life.

NOTE: THE TRUST WAS GRANTOR UNTIL A DISTRIBUTION WAS MADE TO SOMEONE OTHER THAN THE SETTLOR OR SETTLOR'S SPOUSE. ONCE TAINTED AS A FOREIGN NONGRANTOR TRUST ALWAYS A FOREIGN NONGRANTOR TRUST.



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Appendix D: Other Potential International Information Tax Returns May be Required

Foreign trusts typically utilize foreign entities as part of the trust structure. This may require additional reporting requirements.

- Form 8621, Return by a Shareholder of a Passive Foreign Investment Company (PFIC)
 - Pursuant to the attribution and constructive ownership rules of IRC § 1298 a U.S. owner and / or beneficiary of a foreign trust may be treated as a shareholder of a passive foreign investment company as a result of their interest in the foreign trust
 - Resulting in the possibility of additional income recognition
- Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporation (CFC)
 - Pursuant to the attribution and constructive ownership rules of IRC § 958 a U.S. owner and / or beneficiary of a foreign trust may be treated as a shareholder of a controlled foreign corporation as a result of their interest in the foreign trust
 - Resulting in the possibility of additional income recognition under the Subpart F rules

Appendix E: Eliminating CFC and PFIC Filing Obligations

- **Possible elimination of CFC and PFIC filing obligations**
 - Form 8832 (Check-The-Box Election)
 - Election to treat underlying entities as disregarded
 - Elect to disregard entities day before date of death
 - Late election – 3 years and 75 days

Professional Profile

Jack R. Brister

Jack has more than 25 years of experience. He specializes in U.S. tax planning and compliance for non-U.S. families with international wealth and asset protection structures which include non-U.S. trusts, estates and civil law foundations that have a U.S. connection; and non-U.S. companies wanting to do business in the U.S.

Jack also specializes in non-U.S. persons investing in U.S. real property, and other U.S. assets, pre-immigration planning, U.S. expatriation matters, U.S. persons in receipt of gifts and inheritances from non-U.S. persons, non-U.S. account and asset reporting, offshore voluntary disclosures, FATCA registration and compliance (W-8BEN-E and Form 8966) and executives working and living abroad.

Jack has been widely published, in addition to speaking at numerous international engagements. Jack has also been named a Citywealth Top 100 U.S. Wealth Advisor.