

Trust Determination Questionnaire

The following descriptions and questions provide guidance on whether a Non-US trust is treated as a Grantor Trust, Complex Trust, or Simple Trust for US tax purposes. Clients should be instructed to review the terms within their trust deed and/or consult with their legal and tax advisors to make an applicable selection.

A GRANTOR TRUST DETERMINATION

For US Tax purposes, the Grantor is treated as the owner of the trust assets to the extent the Grantor contributed property to the Grantor Trust. A Non-US trust is treated as a Grantor Trust where the following conditions are met.

1. Is a Grantor a **Non-US individual**? If so,

- (i) Is only the Grantor and/or the Grantor's spouse entitled to receive distributions from the trust during the lifetime of the grantor (e.g. Spousal Trust)? YES NO
- (ii) Does the trust provide the Grantor the power to revest (i.e. restore ownership of) title to trust property to the Grantor (e.g. Alter Ego Trust)¹ YES NO

Conclusion: If the answer to question 1 (i) **OR** (ii) is "YES", then the trust is treated as a Grantor Trust unless Trustee provides reasonable basis for a different treatment. If the answers to question 1 (i) **AND** (ii) are "NO", then go to question 2.

2. Is a Grantor a **US citizen or resident individual**? If so, trust is generally treated as a Grantor Trust unless the trust deed explicitly provides that no beneficiary (including future or contingent) can be a US person.

- (i) The trust deed does not explicitly prohibit that a beneficiary (including future or contingent) may be a US person? YES NO

Conclusion: If the answer to (i) is "YES", then trust is treated as a Grantor Trust unless trustee provides reasonable basis for a different treatment. If the answer to question 2 (i) is "NO", then go to **Part B**.

Note 1: If the trust was established before September 20, 1995, trust is treated as a Grantor Trust where grantor or grantor's spouse has retained the right to receive income from the trust.

B COMPLEX TRUST DETERMINATION

A Complex Trust is defined as a trust that is not a Grantor Trust or a Simple Trust. A trust that is not determined to be a Grantor Trust in Part A is a Complex Trust where the trust meets any of the following conditions. An example of a Complex Trust is a discretionary inter-vivos family trust established for the benefit of children that does not require that income of the trust be distributed currently. Most inter-vivos family trusts formed or organized in Canada fall into this category.

1. The trust deed does NOT require that income of the trust be distributed currently?² YES NO
2. The trust deed does NOT provide that amounts cannot be paid, be permanently set aside, or be used for charitable purposes? YES NO
3. A distribution of capital has been made by the trust in the year. YES NO

Conclusion: If the answer to question 1, 2 **OR** 3 is "YES", then the trust is treated as a Complex Trust unless Trustee provides reasonable basis for a different treatment. If the answers to question 1, 2 and 3 are "NO", go to **Part C**.

Note 2: For US tax purposes, in general, the income of the trust is considered to be distributed currently where the trustee is under a duty to distribute the income within the tax year.

C SIMPLE TRUST DETERMINATION

A trust that is not determined to be a Grantor Trust in Part A is treated as a Simple Trust where the trust meets all of the following conditions. Classification of a trust formed or organized in Canada as a Simple Trust is rare as a trust established under Canadian law does not require the income of a trust to be distributed on a current basis.

1. The trust deed provides that amounts cannot be paid, be permanently set aside, or be used for charitable purposes? YES NO
2. A distribution of capital has NOT been made by the trust in the year?³ YES NO
3. The trust deed requires that the trust income be distributed currently?⁴ YES NO

Conclusion: If the answer to question 1, 2 **AND** 3 is 'YES', then trust is treated as a Simple Trust unless Trustee provides reasonable basis for a different treatment.

Note 3: Where a trust, that is otherwise determined to be a Simple Trust, makes any distributions other than from current income (i.e. capital distributions) in a given year, the trust is treated as a Complex Trust in that year.

Note 4: For US tax purposes, in general, the income of the trust is considered to be distributed currently where the trustee is under a duty to distribute the income within the tax year.

Final determination of trust type:

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