

## Trust Determination Questionnaire

The following descriptions and questions provide guidance on whether a Non-U.S. trust is treated as a Grantor Trust, Simple Trust, or Complex Trust for U.S. tax purposes. The onus remains with clients to confirm the status of the trust. Clients should be instructed to review the terms of their trust deed and/or consult with their legal and tax advisors to make an appropriate selection. Please refer to the Glossary at the end of this Questionnaire for definitions of underlined words.

Account Name:

### A GRANTOR TRUST DETERMINATION

For U.S. Tax purposes, the Grantor is treated as the owner of the trust assets, to the extent the Grantor contributed property to the trust. Complete the below questions to confirm whether the trust is treated as a Grantor trust. If the trust does not qualify as a Grantor trust, proceed to answer the questions under Section B – Simple Trust Determination, and Section C – Complex Trust Determination.

1. Is the Grantor(s) still alive? (If “Yes”, proceed to question 2. If “No”, the trust is not a Grantor trust; proceed to Section B – Simple Trust Determination) ☐ Yes ☐ No
2. Is the trust revocable i.e. provides the power to restore ownership of title to the trust property to the Grantor (e.g., Alter Ego Trust)? (If “Yes”, go to question 3 below. If “No”, stop here and go to Section B – Simple Trust Determination) ☐ Yes ☐ No
3. Was the trust established by a non-U.S. person(s)? (If “Yes”, answer a) and b) below, if “No”, proceed to question 4)
  - a) If so, 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
  - b) If so, if the trust was established before September 20, 1995, the Grantor or Grantor’s spouse has retained the right to receive income from the trust or certain administrative powers, and there have been no further contributions of trust property by the Grantor since September 20, 1995? ☐ Yes ☐ No
4. Is the Grantor(s) a U.S. person? (If “Yes”, answer a) below. If “No”, proceed to Section B – Simple Trust Determination)
  - a) The trust deed does not explicitly prohibit benefits to U.S. persons (i.e. U.S. persons are permitted to benefit from trust property, including future or contingent beneficiaries). ☐ Yes ☐ No

**Conclusion:** If questions 2, 3, or 4 are “Yes” then the trust should be treated as a Grantor Trust, unless the Trustee of the trust provides a reasonable explanation for the trust to be treated differently. If the trust does not qualify as a Grantor Trust, proceed to Section B – Simple Trust Determination.

### B 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** the following conditions. Classification as a Simple Trust, for a trust formed or organized in Canada is rare, as a trust established under Canadian law generally does not require the income of a trust to be distributed on a current basis.

1. The trust deed indicates that amounts cannot be paid, permanently set aside, or used for charitable purposes. ☐ Yes ☐ No
2. A distribution of capital has **not** been made by the trust in the year. ☐ Yes ☐ No
3. The trust deed requires that the trust income be distributed currently (or at least annually) to the beneficiaries. ☐ Yes ☐ No

**Conclusion:** If questions 1, 2 and 3 are “Yes”, then the trust is treated as a Simple Trust, unless the Trustee provides a reasonable explanation for the trust to be treated differently. If the trust does not qualify as a Simple Trust, proceed to Section C – Complex Trust Determination.

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

### C COMPLEX TRUST DETERMINATION

A Complex Trust is a trust that is **not** a Grantor Trust or Simple Trust. A trust that is not determined to be a Grantor Trust in Part A, and not determined to be a Simple Trust in Part B is a Complex Trust, where all the income of the trust is not required to be distributed (or is not paid or made payable) on an annual basis. An example of a Complex Trust is a discretionary Inter-Vivos family trust, established for the benefit of children. A Complex Trust does not require that income of the trust be distributed currently. Most Inter-Vivos trusts, and Testamentary trusts formed or organized in Canada fall into this category.

Final determination of trust type:

#### GLOSSARY

**Grantor:** Generally, refers to the person who contributed property to the trust, either upon creation of the trust, or later. This person may be the Settlor or Creator of the trust, however there may also be more than one Grantor of a trust. If so, respond to the questions for each Grantor. For example, where a trust is established for a family, both spouses may contribute property to the trust, in which case each spouse is considered a Grantor.

**Non-U.S. Person:** A person or entity who is not a U.S. person, including individuals or entities who are not a U.S. citizen, U.S. tax resident, U.S. Green Card holder, or an entity organized or incorporated in the U.S. A non-U.S. person is a person or entity who is not a U.S. person, per the definition below.

**U.S. Person:** A U.S. person includes any of the following:

- A U.S. citizen, including a person born in the U.S. who has not renounced U.S. citizenship.
- A U.S. tax resident.
- A resident of the U.S., including a U.S. Green Card holder.
- A partnership or corporation organized or incorporated in the U.S., or under the laws of any U.S. state.
- A trust if a court in the U.S. would have the authority to deliver orders or judgments about substantially all issues regarding the administration of the trust, and one or more U.S. persons have the authority to control all of the trust’s major decisions.
- An estate of a deceased person that was a U.S. citizen or resident.

**Income to be distributed currently:** For U.S. 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.

**Inter-Vivos Trust:** A trust established during the Settlor’s lifetime, also known as a living trust.

**Testamentary Trust:** A trust created in a Will by the Testator/Testatrix.