Introduction

Non U.S. citizens and non U.S. residents may have an opportunity to use U.S. foreign grantor trusts for wealth and succession planning for beneficiaries who pay or will pay U.S. tax. This publication focuses on a general overview of foreign grantor trusts and some of their uses.

What is a trust?

A trust is a legal relationship among three parties – the settlor/grantor, the trustee and the beneficiaries – in which the settlor/grantor gives property to the trustee to hold for the beneficiaries. At creation of the trust, the trustee becomes the legal owner of the trust property and the beneficiaries become the beneficial owners. The administration of the trust property is governed by the trust deed, which sets out the terms of the trust.

What is a foreign trust for U.S. tax purposes?

A foreign trust for U.S. tax purposes is a trust governed by laws of a jurisdiction outside the U.S. These trusts may be used for wealth, estate and tax planning purposes. To ensure a trust is considered a foreign trust for U.S. tax purposes, either of the following must be satisfied:

- **Court Test:** A court within the U.S. must not be able to exercise primary jurisdiction over the administration of the trust, or
- **Control Test:** One or more U.S. persons must not have authority to control, by vote or otherwise, all substantial decisions of the trust. The U.S. person need not have formal control (i.e. be a trustee or a fiduciary) as long as the authority exists this test will be triggered.

What is a foreign grantor trust for U.S. tax purposes?

When the grantor of a trust is not a U.S. citizen or resident, a foreign trust may qualify as a foreign grantor trust for U.S. tax purposes. To qualify as a foreign grantor trust one of the following two conditions must be met:

- the trust must be fully revocable by the grantor (i.e. the grantor must retain control over the assets of the trust), or
- during the lifetime of the grantor, only the grantor or the grantor’s spouse may receive distributions from the trust (whether income or capital).

How is a foreign grantor trust taxed under U.S. tax law?

In a foreign grantor trust neither the trust nor the U.S. beneficiaries are generally subject to U.S. tax in connection with the realization of the income by the trust or the distribution of income to the beneficiaries. The income of the trust is considered to be the income of the grantor and the grantor may be taxed in this respect depending on the residency of the grantor.

If a distribution is made by a foreign grantor trust to a U.S. beneficiary, the trust distribution is treated as a gift from the grantor and such gifts are generally not considered to be taxable income for the U.S. beneficiary. Although generally not taxable, distributions to a U.S. beneficiary from a foreign grantor trust must be reported to the I.R.S. in the same manner as other distributions for information purposes.
U.S. tax treatment of trust after the death of the grantor

Upon death of the grantor no U.S. estate tax is imposed, so long as the trust and any foreign corporations it owns are structured and administered properly.

At death, the foreign grantor’s trust will become an irrevocable foreign “non-grantor” trust if it remains in a non U.S. jurisdiction. A foreign non-grantor trust is generally taxed as if it were a non resident, non citizen individual. Therefore after death of the grantor, the foreign non-grantor trust is subject to U.S. income tax on its U.S. source income as well as income effectively connected with trade or business in the U.S.

Special Considerations

Given that there may be U.S. tax consequences at some point in the life of a foreign grantor trust, Cidel maintains separate accounting records for each foreign grantor trust to ensure this can be accounted for if required. Cidel, as trustee, helps coordinate U.S. and other reporting requirements. Additionally, each grantor is required to annually sign a declaration confirming that his/her status as a non U.S. citizen or resident has not changed.

Professional Advice

Cidel works with professional advisors to implement a wide range of structures worldwide. U.S. tax and reporting requirements depend on many factors, therefore you should seek professional tax advice prior to implementing any structure.

Focus on Cidel

- Extensive experience acting as Corporate Trustee in the efficient execution of complex structures
- Trust services offered in a variety of jurisdictions
- Highly qualified team including lawyers and accountants
- Proven ability to provide ideas to tax professionals worldwide
- Open architecture platform allows for wide variety of assets and currencies to be held
WE LIVE BY THE FOLLOWING CORE VALUES:

• WE ARE PASSIONATE ABOUT OUR COMPANY AND ITS REPUTATION.
• WE ARE COMMITTED TO THE SUCCESS OF OUR PEOPLE AND CLIENTS.
• WE BELIEVE IN LONG-TERM RELATIONSHIPS BASED ON MUTUAL TRUST AND RESPECT.
• WE ARE SERIOUS ABOUT OUR CUSTODIAL ROLE.
• WE CONTINUOUSLY DO THINGS BETTER THROUGH INNOVATIVE SOLUTIONS.
• WE ACHIEVE MORE THROUGH TEAMWORK.

WE DELIVER GLOBAL SOLUTIONS TO ENHANCE THE FINANCIAL WELL-BEING OF OUR CLIENTS

MISSION STATEMENT

CORE VALUES

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