

Philadelphia Bar Association Probate & Trust Section Tax Committee

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United States Beneficiaries of Foreign Trusts and Estates

A Walk Through the Code Sections and More

1. Foreign Versus Domestic
 - a. Code Section 7701(a)(30)(E)

2. Grantor Trusts
 - a. Code Section 671
 - i. Who is the grantor?
 - ii. Non adverse party
 - b. Code Section 672(f)(2)
 - i. Is the trust a revocable trust or a grantor only trust?
 - c. Code Section 677
 - i. Does the grandfather rule apply?
 - d. Code Section 679
 - i. Problems under the HIRE Act
 - e. Special Rules –
 - i. The death of the grantor and Federal estate tax
 - ii. Basis step-up - Code Section 1014(b)(2), (3)
 - iii. Preserving grantor trust treatment – Code Section 645
 - f. Reporting Form 3520/Form 3520A, Notice 97-34, Form 8938

3. Non-Grantor Trusts
 - a. Simple Trusts - Code Sections 651, 652
 - b. Complex Trusts - Code Sections 661, 662
 - c. Distributable Net Income - Code Section 643
 - i. Special situations in foreign countries – dividends and capital gains
 - ii. Tax credits
 - d. Undistributed Net Income and the Throwback Rules – Code Sections 665 – 668
 - i. Tax credits
 - ii. The 100% tax benefit!
 - e. Special Rules and Circumstances
 - i. Code Section 643(h), (i) – loans, uncompensated use of property, conduits

- ii. Code Section 668
 - iii. Grantor becomes a US resident
 - iv. Distributions credited and not paid
 - f. Reporting Form 3520/Form 3520A, Notice 97-34, Form 8938
4. Special Situations
- a. Foundations - Is it a bird or is it a plane? Is it a company or is it a trust?
 - b. Code Section 684
5. The HIRE Act/Fatca
- a. Code Section 643(i) uncompensated use of trust property
 - b. Code Section 679(c) uncompensated use of trust property
 - c. Code Section 679(d) presumption
 - d. Reporting by Foreign Financial Institutions – Controlling Persons, Beneficiaries

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