

**§ 1.665(g)-1A**

*Example.* Under the terms of the trust, the trustee must distribute all income currently and has discretion to distribute capital gain to A or to allocate it to corpus. During the taxable year 1971 the trust recognized capital gain in the amount of \$15,000, and capital losses of \$5,000, and had interest income (after expenses) of \$6,000. The trustee distributed \$8,000 to A, consisting of \$6,000 of interest and \$2,000 of capital gain. The \$2,000 of gain distributed to A is included in the computation of distributable net income under § 1.643(a)-3. The balance of the capital gain is not included in distributable net income since it is allocated to corpus and not paid, credited, or required to be distributed to any beneficiary. The trust paid taxes of \$671, all of which are attributable under § 1.665(d)-1A to the undistributed capital gain. The amount of undistributed capital gain of the trust for 1971 is therefore \$7,329, computed as follows:

Total capital gains .....	\$15,000
Less: Capital losses .....	5,000
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Gains in excess of losses .....	10,000
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Less:	
Amount of capital gain included in distributable net income .....	2,000
Taxes imposed on the trust attributable to the undistributed capital gain (see § 1.665(d)-1A) .....	671
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Undistributed capital gain .....	7,329

(2) For purposes of subparagraph (1) of this paragraph, the term *losses for that year* includes losses of the trusts from the sale or exchange of capital assets in preceding taxable years not included in the computation of distributable net income of any year, reduced by such losses taken into account in a subsequent preceding taxable year in computing undistributed capital gain but not reduced by such losses taken into account in determining the deduction under section 1211. See section 1212(b)(2) and the regulations thereunder. For example, assume that a trust had a net long-term capital loss in 1970 of \$5,000. During the years 1971 through 1975, the trust had no capital gains or capital losses. In 1976, it has a long-term capital gain of \$8,000, which it allocates to corpus and does not distribute to a beneficiary, but has no taxes attributable to such gain. The undistributed capital gain for 1976 is \$8,000 - \$5,000, or \$3,000, even though all or a part of the \$5,000 loss was claimed

under section 1211 as a deduction in years 1970 through 1975.

(b) *Foreign trusts.* Distributable net income for a taxable year of a foreign trust created by a U.S. person includes capital gains in excess of capital losses for such year (see § 1.643(a)-6(a)(3)). Thus, a foreign trust created by a U.S. person can never have any undistributed capital gain.

[T.D. 7204, 37 FR 17142, Aug. 25, 1972]

**§ 1.665(g)-1A Capital gain distribution.**

For any taxable year of a trust, the term *capital gain distribution* means, to the extent of the undistributed capital gain of the trust, that portion of an accumulation distribution that exceeds the amount of such accumulation distribution deemed under section 666(a) to be undistributed net income of the trust for all preceding taxable years. See § 1.665(b)-1A for the definition of "accumulation distribution". For any such taxable year the undistributed capital gain includes the total undistributed capital gain for all years of the trust beginning with the first taxable year beginning after December 31, 1968, in which income (as determined under section 643(b)) is accumulated, and ending before such taxable year. See § 1.665(g)-2A for application of the separate share rule. The application of this section may be illustrated by the following example:

*Example.* A trust on the calendar year basis made the following accumulations. For purposes of this example, the undistributed net income is the same as income under applicable local law. No income was accumulated prior to 1970.

Year	Undistributed net income	Undistributed capital gain
1969 .....	None	\$10,000
1970 .....	\$1,000	3,000
1971 .....	None	4,000

The trust has distributable net income in 1972 of \$2,000 and recognizes capital gains of \$4,500 that are allocable to corpus. On December 31, 1972, the trustee makes a distribution of \$20,000 to the beneficiary. There is an accumulation distribution of \$18,000 (\$20,000 distribution less \$2,000 d.n.i.) that consists of undistributed net income of \$1,000 (see § 1.666(a)-1A) and a capital gain distribution of \$7,000. The capital gain distribution is computed as follows:

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Accumulation distribution .....	\$18,000
Less: Undistributed net income .....	1,000
	17,000
Balance .....	17,000
Capital gain distribution (undistributed capital gain of the trust for 1972 (\$3,000 from 1970 and \$4,000 from 1971)) .....	7,000
	10,000
Balance (corpus) .....	10,000

No undistributed capital gain is deemed distributed from 1969 because 1969 is a year prior to the first year in which income is accumulated (1970). The accumulation distribution is not deemed to consist of any part of the capital gains recognized in 1972.

[T.D. 7204, 37 FR 17142, Aug. 25, 1972]

**§ 1.665(g)-2A Application of separate share rule.**

(a) *In general.* If the separate share rule of section 663(c) is applicable for any taxable year of a trust, subpart D is applied as if each share were a separate trust except as provided in paragraph (c) of this section and in §1.668(a)-1A(c). Thus, the amounts of an "accumulation distribution", "undistributed net income", "undistributed capital gain", and "capital gain distribution" are computed separately for each share.

(b) *Allocation of taxes—undistributed net income.* The "taxes imposed on the trust attributable to the undistributed net income" are allocated as follows:

(1) There is first allocated to each separate share that portion of the "taxes imposed on the trust attributable to the undistributed net income" (as defined in §1.665(d)-1A(b)), computed before the allowance of any credits under section 642(a), that bears the same relation to the total of such taxes that the distributable net income of the separate share bears to the distributable net income of the trust, adjusted for this purpose as follows:

(i) There is excluded from distributable net income of the trust and of each separate share any tax-exempt interest, foreign income of a foreign trust, and excluded dividends, to the extent such amounts are included in distributable net income pursuant to section 643(a) (5), (6), and (7); and

(ii) The distributable net income of the trust is reduced by any deductions allowable under section 661 for amounts paid, credited, or required to be distributed during the taxable year,

and the distributable net income of each separate share is reduced by any such deduction allocable to that share.

(2) The taxes so determined for each separate share are then reduced by that portion of the credits against tax allowable to the trust under section 642(a) in computing the "taxes imposed on the trust" that bears the same relation to the total of such credits that the items of distributable net income allocable to the separate share with respect to which the credit is allowed bear to the total of such items of the trust.

(c) *Allocation of taxes—undistributed capital gain.* The "taxes imposed on the trust attributable to undistributed capital gain" are allocated as follows:

(1) There is first allocated to each separate share that portion of the "taxes imposed on the trust attributable to undistributed capital gain" (as defined in §1.665(d)-1A(c)), computed before the allowance of any credits under section 642(a), that bears the same relation to the total of such taxes that the undistributed capital gain (prior to the deduction of taxes under section 665(c)(2)) of the separate share bears to the total such undistributed capital gain of the trust.

(2) The taxes so determined for each separate share are then reduced by that portion of the credits against tax allowable to the trust under section 642(a) in computing the "taxes imposed on the trust" that bears the same relation to the total of such credits that the capital gain allocable to the separate share with respect to which the credit is allowed bear to the total of such capital gain of the trust.

(d) *Termination of a separate share.* (1) If upon termination of a separate share, an amount is properly paid, credited, or required to be distributed by the trust under section 661(a)(2) to a beneficiary from such share, an accumulation distribution will be deemed to have been made to the extent of such amount. In determining the distributable net income of such share, only those items of income and deduction for the taxable year of the trust in which such share terminates, properly allocable to such share, shall be taken into consideration.