

- (i) In general.
- (ii) Special rule.
- (iii) Effect on intermediary.
- (4) Related parties.
- (5) Examples.
- (d) Constructive transfers.
 - (1) In general.
 - (2) Examples.
- (e) Guarantee of trust obligations.
 - (1) In general.
 - (2) Amount transferred.
 - (3) Principal repayments.
 - (4) Guarantee.
 - (5) Examples.
- (f) Transfers to entities owned by a foreign trust.
 - (1) General rule.
 - (2) Examples.

§ 1.679-4 Exceptions to general rule.

- (a) In general.
- (b) Transfers for fair market value.
 - (1) In general.
 - (2) Special rule.
- (i) Transfers for partial consideration.
- (ii) Example.
- (c) Certain obligations not taken into account.
 - (d) Qualified obligations.
 - (1) In general.
 - (2) Additional loans.
 - (3) Obligations that cease to be qualified.
 - (4) Transfers resulting from failed qualified obligations.
 - (5) Renegotiated loans.
 - (6) Principal repayments.
 - (7) Examples.

§ 1.679-5 Pre-immigration trusts.

- (a) In general.
- (b) Special rules.
 - (1) Change in grantor trust status.
 - (2) Treatment of undistributed income.
- (c) Examples.

§ 1.679-6 Outbound migrations of domestic trusts.

- (a) In general.
- (b) Amount deemed transferred.
- (c) Example.

§ 1.679-7 Effective dates.

- (a) In general.
- (b) Special rules.

[T.D. 8955, 66 FR 37889, July 20, 2001]

§ 1.679-1 U.S. transferor treated as owner of foreign trust.

(a) *In general.* A U.S. transferor who transfers property to a foreign trust is treated as the owner of the portion of the trust attributable to the property

transferred if there is a U.S. beneficiary of any portion of the trust, unless an exception in § 1.679-4 applies to the transfer.

(b) *Interaction with sections 673 through 678.* The rules of this section apply without regard to whether the U.S. transferor retains any power or interest described in sections 673 through 677. If a U.S. transferor would be treated as the owner of a portion of a foreign trust pursuant to the rules of this section and another person would be treated as the owner of the same portion of the trust pursuant to section 678, then the U.S. transferor is treated as the owner and the other person is not treated as the owner.

(c) *Definitions.* The following definitions apply for purposes of this section and §§ 1.679-2 through 1.679-7:

(1) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.679-3) of property to a foreign trust.

(2) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), a non-resident alien individual who elects under section 6013(g) to be treated as a resident of the United States, and an individual who is a dual resident taxpayer within the meaning of § 301.7701(b)-7(a) of this chapter.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines the term *foreign trust*. See also § 301.7701-7 of this chapter.

(4) *Property.* The term *property* means any property including cash.

(5) *Related person.* A person is a *related person* if, without regard to the transfer at issue, the person is—

(i) A grantor of any portion of the trust (within the meaning of § 1.671-2(e)(1));

(ii) An owner of any portion of the trust under sections 671 through 679;

(iii) A beneficiary of the trust; or

(iv) A person who is related (within the meaning of section 643(i)(2)(B)) to any grantor, owner or beneficiary of the trust.

(6) *Obligation.* The term *obligation* means any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other evidence of indebtedness, and, to the extent not previously described, any annuity contract.

(d) *Examples.* The following examples illustrate the rules of paragraph (a) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s father, who is a resident alien, *D* is *A*'s uncle, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Interaction with section 678. *A* creates and funds *FT*. *FT* may provide for the education of *B* by paying for books, tuition, room and board. In addition, *C* has the power to vest the trust corpus or income in himself within the meaning of section 678(a)(1). Under paragraph (b) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred to *FT* by *A* and *C* is not treated as the owner thereof.

Example 2. U.S. person treated as owner of a portion of FT. *D* creates and funds *FT* for the benefit of *B*. *D* retains a power described in section 676 and § 1.672(f)-3(a)(1). *A* transfers property to *FT*. Under sections 676 and 672(f), *D* is treated as the owner of the portion of *FT* attributable to the property transferred by *D*. Under paragraph (a) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred by *A*. [T.D. 8955, 66 FR 37889, July 20, 2001]

§ 1.679-2 Trusts treated as having a U.S. beneficiary.

(a) *Existence of U.S. beneficiary—(1) In general.* The determination of whether a foreign trust has a U.S. beneficiary is made on an annual basis. A foreign trust is treated as having a U.S. beneficiary unless during the taxable year of the U.S. transferor—

(i) No part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, directly or indirectly, a U.S. person; and

(ii) If the trust is terminated at any time during the taxable year, no part of the income or corpus of the trust could be paid to or for the benefit of, directly or indirectly, a U.S. person.

(2) *Benefit to a U.S. person—(i) In general.* For purposes of paragraph (a)(1) of this section, income or corpus may be paid or accumulated to or for the benefit of a U.S. person during a taxable year of the U.S. transferor if during that year, directly or indirectly, income may be distributed to, or accumulated for the benefit of, a U.S. person, or corpus may be distributed to, or held for the future benefit of, a U.S. person. This determination is made

without regard to whether income or corpus is actually distributed to a U.S. person during that year, and without regard to whether a U.S. person's interest in the trust income or corpus is contingent on a future event.

(ii) *Certain unexpected beneficiaries.* Notwithstanding paragraph (a)(2)(i) of this section, for purposes of paragraph (a)(1) of this section, a person who is not named as a beneficiary and is not a member of a class of beneficiaries as defined under the trust instrument is not taken into consideration if the U.S. transferor demonstrates to the satisfaction of the Commissioner that the person's contingent interest in the trust is so remote as to be negligible. The preceding sentence does not apply with respect to persons to whom distributions could be made pursuant to a grant of discretion to the trustee or any other person. A class of beneficiaries generally does not include heirs who will benefit from the trust under the laws of intestate succession in the event that the named beneficiaries (or members of the named class) have all deceased (whether or not stated as a named class in the trust instrument).

(iii) *Examples.* The following examples illustrate the rules of paragraphs (a)(1) and (2) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Distribution of income to U.S. person. *A* transfers property to *FT*. The trust instrument provides that all trust income is to be distributed currently to *B*. Under paragraph (a)(1) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Income accumulation for the benefit of a U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that from 2001 through 2010, the trustee of *FT* may distribute trust income to *C* or may accumulate the trust income. The trust instrument further provides that in 2011, the trust will terminate and the trustee may distribute the trust assets to either or both of *B* and *C*, in the trustee's discretion. If the trust terminates unexpectedly prior to 2011, all trust assets must be distributed to *C*. Because it is possible that income may be accumulated in each year, and that the accumulated income ultimately may be distributed to *B*, a U.S. person, under paragraph (a)(1) of