

Definition of Trust

- Under US law, it is considered an arrangement where the title to a property is transferred (to someone who has fiduciary responsibility) to conserve re property for the benefit of other persons
- Two tests to determine if a US trust – 1) US Court Test, 2) Control Test
- Control Test – Primarily US persons control all substantial decisions. Could include grantor, trustee, investment managers etc. No control if subject to veto

Major Types Subject to US Tax

- Grantor Trusts – In this case a US person transfers assets to a foreign trust and the income is generally taxed on the Grantor's return. No US tax on distributions
- Non-Grantor Trusts – In this case a Foreign person transfers assets to a foreign trust that has US beneficiaries. US tax on distributions

Grantor Trusts

- 1) US person is transferor – incl. partnerships/corps/trusts
- 2) Direct/Indirect transfer to trust – excludes cases where due to death
- 3) It is a foreign trust
- 4) Trust has a US beneficiary (current year) – This is default case unless terms of trust indicate otherwise i.e. income cannot go to a US person

Deemed ownership rules in place

Grantor Trusts - Implications

- Form 3520 – Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts
- Form 3520-A, Annual Information Return of Foreign Trusts
- Need Employer Identification Number (EIN) – Form SS-4
- Distributions not taxable as income has already been taxed

Foreign Non-Grantor Trusts - Implications

- Any foreign trust that is not a Grantor trust
- No tax in US unless US source income
- Distributions to US beneficiaries – DNI/UNI etc. (beyond scope) – DNI generally included in income

Key Take Away

- Form 3520 – both grantor/non-grantor trusts complete – transfer or distribution
- Form 3520-A – Grantor Trusts

3520-A

- Filed by US owner(on behalf of the foreign trust)
- March 15th – Extensions (Form 7004) until Sep 15th
- Significant Penalties for non-Filers

3520

- Usually when receipt by a US beneficiary or transfer by a US person
- File by April 15th – Extension (4868)
- Significant penalties for non-filers

3520 – Cont'd

1. US Transferor – Part I
2. US owner – Part II
3. US Beneficiaries – Part III
4. US person receiving gifts – Part IV – ~100k from NR individuals

Form 3520 / 3520-A

- US owner designated as US agent – if not that info to be attached
- Generally need FMV calendar year Balance sheet and Income statement – statements from Financial institutions should work
- Dates of original contributions and distributions as well as Names and addresses along with SSNs for US owners and beneficiaries

What about Canadian Trusts (from US side)

- TFSA
- RESP
- RDSP
- RRSP / LIRA – excepted from 3520/3520-A (still go on 8938)

Case

- Mr. Andrew and Mrs. Andrew are residents / Citizens of Canada. They established residency in US during 2016. They became resident aliens in June 2016. They hold the following accounts:
 1. TFSA – Mr. Andrew
 2. TFSA – Mrs. Andrew
 3. RESP – both own and contribute on behalf of daughter
 4. RRSP – Mr. Andrew

Case – Cont'd

1. List the owners / Beneficiaries for each of the accounts
2. Also, list the US forms to be completed for each account

Case – Cont'd

1. TFSA – Mr. Andrew – Owner (made original contributions) and US beneficiary (legal right to assets) – One Form 3520 and one Form 3520-A
2. TFSA – Mrs. Andrew - Owner (made original contributions) and US beneficiary (legal right to assets) - One Form 3520 and one Form 3520-A
3. RESP – both own and contribute on behalf of daughter – Both are owners (both made original contributions). Son is US beneficiary - One Form 3520-A (account) and two 3520s (spouses)
4. RRSP – Mr. Andrew – exempt from filing 3520 / 3520-A

Case – Cont'd

- Let's assume full year election was filed
- Here are the details for the RESP for 2016 (through investment statements):
- Jan 1, - C\$10,000
- Dec 31 – C\$ 21,000
- Contributions – C\$ 2,500 per spouse on July 1, 2015 and Mar 1, 2016 respectively
- Gov't provides grants of \$1,000 per year (Dec)
- Dividend of \$1,000 reinvested
- No distributions

Case – Cont'd

- 3520A
- Part I
 - what to complete
- Part II & III
 - to be completed in USD
 - FX – Assets / Liabilities – BS date
 - Opening - $\$10,000 / 1.384 = \text{US}\$7,226$
 - Opening – Gov't grants treated as liability - $\$1,000 / 1.384 = \text{US}\$ 723$
 - Closing – $\$21,000 / 1.30 = 16,153$
 - Closing - Gov't grants treated as liability - $\$2,000 / 1.30 = \text{US}\$ 1,538$

Case – Cont'd

- FX – Income Statement – spot rates for contribution and annual averages for income
- Contributions (July 1) - $\$2,500 / \text{deemed Jan 1 rate (1.384)} = \text{US}\$, 1806$
- Contributions (Mar 1) - $\$2,500 / 1.40 \text{ (estimated)} = \text{US}\$1,785$
- Total = $\$ 7,182$
- Dividends – $\text{C}\$1,000 / 1.32 \text{ (est.)} = \text{US}\758

Case – Cont'd

- Balance sheet – unrealised gain/loss – Line 19 – usually attach explanation
- Make sure you know how the numbers are computed in Part III
- 3520 – Which parts will be filled?

Case – Cont'd

3520

- Part I – Yes
- Part II – Yes
- Part III – No
- Part IV - No