§ 1.643(d)–1 Definition of “foreign trust created by a United States person”.

(a) In general. For the purpose of part I, subchapter J, chapter 1 of the Internal Revenue Code, the term foreign trust created by a United States person means that portion of a foreign trust (as defined in section 7701(a)(31)) attributable to money or property (including all accumulated earnings, profits, or gains attributable to such money or property) of a U.S. person (as defined in section 7701(a)(30)) transferred directly or indirectly, or under the will of a decedent who at the date of his death was a U.S. citizen or resident, to the foreign trust. A foreign trust created by a person who is not a U.S. person, to which a U.S. person transfers his money or property, is a foreign trust created by a U.S. person to the extent that the fair market value of the entire foreign trust is attributable to money or property of the U.S. person transferred to the foreign trust. The transfer of money or property to the foreign trust may be made either directly or indirectly by a U.S. person. Transfers of money or property to a foreign trust do not include transfers of money or property pursuant to a sale or exchange which is made for a full and adequate consideration. Transfers to which section 643(d) and this section apply are transfers of money or property which establish or increase the corpus of a foreign trust. The rules set forth in this section with respect to transfers by a U.S. person to a foreign trust also are applicable with respect to transfers under the will of a decedent who at the date of his death was a U.S. citizen or resident. For provisions relating to the information returns which are required to be filed with respect to transfers to foreign trusts, see section 6048 and §16.3–1 of this chapter (Temporary Regulations under the Revenue Act of 1962).

(b) Determination of a foreign trust created by a U.S. person—(1) Transfers of money or property only by a U.S. person. If all the items of money or property constituting the corpus of a foreign trust are transferred to the trust by a U.S. person, the entire foreign trust is a foreign trust created by a U.S. person.

(2) Transfers of money or property by both a U.S. person and a person other than a U.S. person; transfers required to be treated as separate funds. Where there are transfers of money or property by both a U.S. person and a person other than a U.S. person to a foreign trust, and it is necessary, either by reason of the provisions of the governing instrument of the trust or by reason of some other requirement such as local law, that the trustee treat the entire foreign trust as composed of two separate funds, one consisting of the money or
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property (including all accumulated earnings, profits, or gains attributable to such money or property) transferred by the U.S. person and the other consisting of the money or property (including all accumulated earnings, profits, or gains attributable to such money or property) transferred by the person other than the U.S. person, the foreign trust created by a U.S. person shall be the fund consisting of the money or property transferred by the U.S. person. See example 1 in paragraph (c) of this section.

(3) Transfers of money or property by both a U.S. person and a person other than a U.S. person; transfers not required to be treated as separate funds. Where the corpus of a foreign trust consists of money or property transferred to the trust (simultaneously or at different times) by a U.S. person and by a person who is not a U.S. person, the foreign trust created by a U.S. person within the meaning of section 643(d) is that portion of the entire foreign trust which, immediately after any transfer of money or property to the trust, the fair market value of money or property (including all accumulated earnings, profits, or gains attributable to such money or property) transferred to the foreign trust by the U.S. person bears to the fair market value of the corpus (including all accumulated earnings, profits, or gains attributable to the corpus) of the entire foreign trust.

(c) Examples. The provisions of paragraph (b) of this section may be illustrated by the following examples. Example 1 illustrates the application of paragraph (b)(3) of this section in a case where there is no provision in the governing instrument of the trust or elsewhere which would require the trustee to treat the corpus of the trust as composed of more than one fund.

Example 1. On January 1, 1964, the date of the creation of a foreign trust, a U.S. person transfers to it stock of a U.S. corporation with a fair market value of $50,000. On the same day, a person other than a U.S. person transfers to the trust Country X bonds with a fair market value of $60,000 increasing the value of the entire foreign trust to $110,000 ($50,000 plus $60,000) which increases the value of the entire foreign trust to $120,000 ($100,000 plus $20,000). Accordingly, as of December 31, 1965, the portion of the foreign trust created by the U.S. person is $72,000 (60 percent of $120,000). On January 1, 1966, the U.S. person transfers property having a fair market value of $40,000 increasing the value of the entire foreign trust to $160,000 ($120,000 plus $40,000) and increasing the value of the portion of the foreign trust created by the U.S. person to $112,000 ($72,000 plus $40,000). Immediately, after this transfer, the foreign trust created by the U.S. person is 70 percent of the entire foreign trust, determined as follows:

$112,000 (Value of property transferred by U.S. person)/$160,000 (Value of entire property transferred to trust)=70 percent

The undistributed net income for the calendar years 1964 and 1965 is $20,000 which increased the value of the entire foreign trust to $120,000 ($100,000 plus $20,000). Accordingly, as of December 31, 1965, the portion of the foreign trust created by the U.S. person is $72,000 (60 percent of $120,000). On January 1, 1966, the U.S. person transfers property having a fair market value of $40,000 increasing the value of the entire foreign trust to $160,000 ($120,000 plus $40,000) and increasing the value of the portion of the foreign trust created by the U.S. person to $112,000 ($72,000 plus $40,000). Immediately, after this transfer, the foreign trust created by the U.S. person is 70 percent of the entire foreign trust, determined as follows:

$112,000 (Value of property transferred by U.S. person)/$160,000 (Value of entire property transferred to trust)=70 percent


§ 1.643(d)-2 Illustration of the provisions of section 643.

(a) The provisions of section 643 may be illustrated by the following example:

Example. (1) Under the terms of the trust instrument, the income of a trust is required to be currently distributed to W during her life. Capital gains are allocable to corpus and