§ 1.679–4 Exceptions to general rule.

(a) In general. Section 1.679–1 does not apply to—

(1) Any transfer of property to a foreign trust by reason of the death of the transferor;

(2) Any transfer of property to a foreign trust described in sections 402(b), 404(a)(4), or 404A;

(3) Any transfer of property to a foreign trust described in section 501(c)(3) (without regard to the requirements of section 508(a)); and

(4) Any transfer of property to a foreign trust to the extent the transfer is for fair market value.

(b) Transfers for fair market value—(1) In general. For purposes of this section, a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust. For example, rents, royalties, interest, and compensation paid to a trust are transfers for fair market value only to the extent that the payments reflect an arm’s length price for the use of the property of, or for the services rendered by, the trust. For purposes of this determination, an interest in the trust is not property received from the trust. For purposes of this section, a distribution to a trust with respect to an interest held by such trust in an entity other than a trust or an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter is considered to be a transfer for fair market value.

(2) Special rule—(i) Transfers for partial consideration. For purposes of this section, if a person transfers property to a foreign trust in exchange for property having a fair market value that is less than the fair market value of the property transferred, the exception in paragraph (a)(4) of this section applies only to the extent of the fair market value of the property received.

(ii) Example. This paragraph (b) is illustrated by the following example:

Example. A, a U.S. citizen, transfers property that has a fair market value of 1000X to FT, a foreign trust, in exchange for 600X of cash. Under this paragraph (b), § 1.679–1 applies with respect to the transfer of 400X (1000X less 600X) to FT.

(c) Certain obligations not taken into account. Solely for purposes of this section, in determining whether a transfer by a U.S. transferor that is a related person (as defined in § 1.679–1(c)(5)) with respect to the foreign trust is for fair market value, any obligation (as defined in § 1.679–1(c)(6)) of the trust or a related person (as defined in § 1.679–1(c)(5)) that is not a qualified obligation within the meaning of paragraph (d)(1) of this section shall not be taken into account.

(d) Qualified obligations—(1) In general. For purposes of this section, an obligation is treated as a qualified obligation only if—

(i) The obligation is reduced to writing by an express written agreement;

(ii) The term of the obligation does not exceed five years (for purposes of determining the term of an obligation, the obligation’s maturity date is the last possible date that the obligation can be outstanding under the terms of the obligation);

(iii) All payments on the obligation are denominated in U.S. dollars;

(iv) The yield to maturity is not less than 100 percent of the applicable Federal rate and not greater than 130 percent of the applicable Federal rate (the applicable Federal rate for an obligation is the applicable Federal rate in effect under section 1274(d) for the day on which the obligation is issued, as published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter));

(v) The U.S. transferor extends the period for assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding, to a date not earlier than three years after the maturity date of the obligation (this extension is not necessary if the maturity date of the obligation does not extend beyond the end of the U.S. transferor’s taxable year for the year of the transfer and is paid within such period); when properly executed and filed, such an agreement is deemed to be consented to for purposes of § 301.6501(c)–1(d) of this chapter; and
(vi) The U.S. transferor reports the status of the loan, including principal and interest payments, on Form 3520 for every year that the loan is outstanding.

(2) Additional loans. If, while the original obligation is outstanding, the U.S. transferor or a person related to the trust (within the meaning of §1.679–1(c)(5)) directly or indirectly obtains another obligation issued by the trust, or if the U.S. transferor directly or indirectly obtains another obligation issued by a person related to the trust, the original obligation is deemed to have the maturity date of any such subsequent obligation in determining whether the term of the original obligation exceeds the specified 5-year term. In addition, a series of obligations issued and repaid by the trust (or a person related to the trust) is treated as a single obligation if the transactions giving rise to the obligations are structured with a principal purpose to avoid the application of this provision.

(3) Obligations that cease to be qualified. If an obligation treated as a qualified obligation subsequently fails to be a qualified obligation (e.g., renegotiation of the terms of the obligation causes the term of the obligation to exceed five years), the U.S. transferor is treated as making a transfer to the trust in an amount equal to the original obligation’s adjusted issue price (within the meaning of §1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of §1.1273–1(c)) as of the date of the subsequent event that causes the obligation to no longer be a qualified obligation. If the maturity date is extended beyond five years by reason of the issuance of a subsequent obligation by the trust (or person related to the trust), the amount of the transfer will not exceed the issue price of the subsequent obligation. The subsequent obligation is separately tested to determine if it is a qualified obligation.

(4) Transfers resulting from failed qualified obligations. In general, a transfer resulting from a failed qualified obligation is deemed to occur on the date of the subsequent event that causes the obligation to no longer be a qualified obligation. However, based on all of the facts and circumstances, the Commissioner may deem a transfer to have occurred on any date on or after the issue date of the original obligation. For example, if at the time the original obligation was issued, the transferor knew or had reason to know that the obligation would not be repaid, the Commissioner could deem the transfer to have occurred on the issue date of the original obligation.

(5) Renegotiated loans. Any loan that is renegotiated, extended, or revised is treated as a new loan, and any transfer of funds to a foreign trust after such renegotiation, extension, or revision under a pre-existing loan agreement is treated as a transfer subject to this section.

(6) Principal repayments. The payment of principal with respect to any obligation that is not treated as a qualified obligation under this paragraph is taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(7) Examples. The rules of this paragraph (d) are illustrated by the following examples. In the examples, A and B are U.S. residents and FT is a foreign trust. The examples are as follows:

Example 1. Demand loan. A transfers 500X to FT in exchange for a demand note that permits A to require repayment by FT at any time. A is a related person (as defined in §1.679–1(c)(5)) with respect to FT. Because FT's obligation to A could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether A’s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, §1.679–1 applies with respect to the full 500X transfer to FT.

Example 2. Private annuity. A transfers 4000X to FT in exchange for an annuity from the foreign trust that will pay A 100X per year for the rest of A's life. A is a related person (as defined in §1.679–1(c)(5)) with respect to FT. Because FT's obligation to A could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether A’s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section.
value exception of paragraph (a)(4) of this section. Accordingly, § 1.679–1 applies with respect to the full 5000X transfer to FT.

Example 4. Transfer for an obligation with term in excess of 5 years. A transfers property that has a fair market value of 5000X to FT in exchange for an obligation of the trust. The term of the obligation is ten years. A is a related person (as defined in § 1.679–1(c)(5)) with respect to FT. Because the term of the obligation is greater than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section, even though the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section. Accordingly, § 1.679–1 applies with respect to the full 5000X transfer to FT.

Example 5. Transfer for a qualified obligation. The facts are the same as in Example 4, except that the term of the obligation is 3 years. Assuming the other requirements of paragraph (d)(1) of this section are satisfied, the obligation is a qualified obligation and its adjusted issue price is taken into account for purposes of determining whether A’s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Because the term of the obligation is greater than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section, even though the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section. Accordingly, § 1.679–1 applies with respect to the full 5000X transfer to FT.

Example 6. Effect of subsequent obligation on original obligation. A transfers property that has a fair market value of 1000X to FT in exchange for an obligation that satisfies the requirements of paragraph (d)(1) of this section. A is a related person (as defined in § 1.679–1(c)(5)) with respect to FT. Two years later, A transfers an additional 2000X to FT and receives another obligation from FT that has a maturity date four years from the date that the second obligation was issued. Under paragraph (d)(2) of this section, the original obligation is deemed to have the maturity date of the second obligation. Under paragraph (a) of this section, A is treated as having made a transfer in an amount equal to the original obligation’s adjusted issue price (within the meaning of § 1.1275–1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273–1(c)) as of the date of issuance of the second obligation. The second obligation is tested separately to determine whether it is a qualified obligation for purposes of applying paragraph (a) of this section to the second transfer.

§ 1.679–5  Pre-immigration trusts.

(a) In general. If a nonresident alien individual becomes a U.S. person and the individual has a residency starting date (as determined under section 7701(b)(2)(A)) within 5 years after directly or indirectly transferring property to a foreign trust (the original transfer), the individual is treated as having transferred to the trust on the residency starting date an amount equal to the portion of the trust attributable to the property transferred by the individual in the original transfer.

(b) Special rules—(1) Change in grantor trust status. For purposes of paragraph (a) of this section, if a nonresident alien individual who is treated as owning any portion of a trust under the provisions of subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, subsequently ceases to be so treated, the individual is treated as having made the original transfer to the foreign trust immediately before the trust ceases to be treated as owned by the individual.

(2) Treatment of undistributed income. For purposes of paragraph (a) of this section, the property deemed transferred to the foreign trust on the residency starting date includes undistributed net income, as defined in section 665(a), attributable to the property deemed transferred. Undistributed net income for periods before the individual’s residency starting date is taken into account only for purposes of determining the amount of the property deemed transferred.

(c) Examples. The rules of this section are illustrated by the following examples:

Example 1. Nonresident alien becomes resident alien. On January 1, 2002, A, a nonresident alien individual, transfers property to a foreign trust, FT. On January 1, 2006, A becomes a resident of the United States within the meaning of section 7701(b)(1)(A) and has a residency starting date of January 1, 2006, within the meaning of section 7701(b)(2)(A). Under paragraph (a) of this section, A is treated as a U.S. transferor and is deemed to transfer the property to FT on January 1, 2006. Under paragraph (b)(2) of this section, the property deemed transferred to FT on