

on the termination of T's income interest. The trustee has the power to invade trust principal for the benefit of GC during the term of T's income interest. The trust is subject to an ETIP while T holds the retained income interest. T files a timely Form 709 reporting the transfer and allocates \$100,000 of GST exemption to the trust. In year 4, when the value of the trust is \$200,000, the trustee distributes \$15,000 to GC. The distribution is a taxable distribution. Because of the existence of the ETIP, the inclusion ratio with respect to the taxable distribution is determined immediately prior to the occurrence of the GST. Thus, the inclusion ratio applicable to the year 4 GST is .50 (1 - (\$100,000/\$200,000)).

(ii) In year 5, when the value of the trust is again \$200,000, the trustee distributes another \$15,000 to GC. Because the trust is still subject to the ETIP in year 5, the inclusion ratio with respect to the year 5 GST is again computed immediately prior to the GST. In computing the new inclusion ratio, the numerator of the applicable fraction is reduced by the nontax portion of prior GSTs occurring during the ETIP. Thus, the numerator of the applicable fraction with respect to the GST in year 5 is \$92,500 (\$100,000 - (.50 × \$15,000)) and the inclusion ratio applicable with respect to the GST in year 5 is .537 (1 - (\$92,500/\$200,000) = .463). Any additional GST exemption allocated on a timely ETIP return with respect to the GST in year 5 is effective immediately prior to the transfer.

[T.D. 8644, 60 FR 66903, Dec. 27, 1995; 61 FR 29654, June 12, 1996]

#### § 26.2642-5 Finality of inclusion ratio.

(a) *Direct skips.* The inclusion ratio applicable to a direct skip becomes final when no additional GST tax (including additional GST tax payable as a result of a cessation, etc. of qualified use under section 2032A(c)) may be assessed with respect to the direct skip.

(b) *Other GSTs.* With respect to taxable distributions and taxable terminations, the inclusion ratio for a trust becomes final, on the later of—

(1) The expiration of the period for assessment with respect to the first GST tax return filed using that inclusion ratio (unless the trust is subject to an election under section 2032A in which case the applicable date under this subsection is the expiration of the period of assessment of any additional GST tax due as a result of a cessation, etc. of qualified use under section 2032A); or

(2) The expiration of the period for assessment of Federal estate tax with

respect to the estate of the transferor. For purposes of this paragraph (b)(2), if an estate tax return is not required to be filed, the period for assessment is determined as if a return were required to be filed and as if the return were timely filed within the period prescribed by section 6075(a).

[T.D. 8644, 60 FR 66903, Dec. 27, 1995, as amended at 61 FR 43656, Aug. 26, 1996]

#### § 26.2642-6 Qualified severance.

(a) *In general.* If a trust is divided in a qualified severance into two or more trusts, the separate trusts resulting from the severance will be treated as separate trusts for generation-skipping transfer (GST) tax purposes and the inclusion ratio of each new resulting trust may differ from the inclusion ratio of the original trust. Because the post-severance resulting trusts are treated as separate trusts for GST tax purposes, certain actions with respect to one resulting trust will generally have no GST tax impact with respect to the other resulting trust(s). For example, GST exemption allocated to one resulting trust will not impact on the inclusion ratio of the other resulting trust(s); a GST tax election made with respect to one resulting trust will not apply to the other resulting trust(s); the occurrence of a taxable distribution or termination with regard to a particular resulting trust will not have any GST tax impact on any other trust resulting from that severance. In general, the rules in this section are applicable only for purposes of the GST tax and are not applicable in determining, for example, whether the resulting trusts may file separate income tax returns or whether the severance may result in a gift subject to gift tax, may cause any trust to be included in the gross estate of a beneficiary, or may result in a realization of gain for purposes of section 1001. See § 1.1001-1(h) of this chapter for rules relating to whether a qualified severance will constitute an exchange of property for other property differing materially either in kind or in extent.

(b) *Qualified severance defined.* A qualified severance is a division of a trust (other than a division described