United States Beneficiaries of Foreign Trusts and Estates

A Walk Through the Code Sections and More

1. Foreign Versus Domestic
   a. Code Section 7701(a)(30)(E)

2. Grantor Trusts
   a. Code Section 671
      i. Who is the grantor?
      ii. Non adverse party
   b. Code Section 672(f)(2)
      i. Is the trust a revocable trust or a grantor only trust?
   c. Code Section 677
      i. Does the grandfather rule apply?
   d. Code Section 679
      i. Problems under the HIRE Act
   e. Special Rules –
      i. The death of the grantor and Federal estate tax
      ii. Basis step-up - Code Section 1014(b)(2), (3)
      iii. Preserving grantor trust treatment – Code Section 645
   f. Reporting Form 3520/Form 3520A, Notice 97-34, Form 8938

3. Non-Grantor Trusts
   a. Simple Trusts - Code Sections 651, 652
   b. Complex Trusts - Code Sections 661, 662
   c. Distributable Net Income - Code Section 643
      i. Special situations in foreign countries – dividends and capital gains
      ii. Tax credits
      i. Tax credits
      ii. The 100% tax benefit!
   e. Special Rules and Circumstances
      i. Code Section 643(h), (i) – loans, uncompensated use of property, conduits
ii. Code Section 668
iii. Grantor becomes a US resident
iv. Distributions credited and not paid
f. Reporting Form 3520/Form 3520A, Notice 97-34, Form 8938

4. Special Situations
   a. Foundations - Is it a bird or is it a plane? Is it a company or is it a trust?
   b. Code Section 684

5. The HIRE Act/Fatca
   a. Code Section 643(i) uncompensated use of trust property
   b. Code Section 679(c) uncompensated use of trust property
   c. Code Section 679(d) presumption
   d. Reporting by Foreign Financial Institutions – Controlling Persons, Beneficiaries

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