



Foreign Grantor Trusts

Nerine Trust Company Limited

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A Foreign Grantor Trust (FGT) is a term given by the US for trusts that have certain features and therefore have a particular tax status under the US tax code. The 'foreign' element of the term is because the trust is not a domestic US trust, and 'grantor' is the term given to the person who has set up the trust (generally known as a settlor in other jurisdictions).

A FGT is used when a non-US person wishes to create a trust for the benefit of a US person or persons. A non-US person is an individual who is not a US citizen, not a green card holder nor otherwise considered a US tax resident.

To enable the trust to qualify as a FGT, one of two features is generally required;

- the trust is revocable , or;
- the only persons able to benefit during the lifetime of the grantor is the grantor and their spouse

Therefore, whether to create a revocable FGT or have strict limitations on future distributions will generally depend on a number of factors, including tax implications in the grantor's country of residence.

Due to the above requirements, an FGT will work for some but may not for others depending on where they are resident. US advice should be taken, along with advice on any local rules relating to the creation and ongoing administration of foreign trusts in the grantor's home jurisdiction, and advice for any non-US beneficiaries resident elsewhere.

If an FGT is able to be used, both the grantor and the FGT itself should enjoy a number of tax advantages. The US tax code recognises the grantor as the 'owner' of the assets during their lifetime, and if that person is a non-US person, the grantor should not be subject to taxation in the US on the trust assets. Provided

the trust does not receive any US source income, the trust should also be exempt from US taxation. Where US sourced income does arise, taxation will apply.

The Grantor can receive distributions from the trust tax free during their lifetime due to them being deemed the owner of the assets for US tax purposes. Other distributions made from the trust to another beneficiary would ordinarily be treated as a non-taxable gift from the grantor. If the recipient is a US beneficiary, they will be required to report any distribution they receive from the trust, regardless of the amount, to the IRS. It is possible for the grantor to receive a distribution from the trust and independently choose to gift some or all of the funds to a US beneficiary on a tax free basis, however this is subject to the usual tax reporting by the US beneficiary on amounts over USD100,000.

Non-Grantor status

When the foreign grantor passes away, the trust is referred to as a Foreign Non-Grantor Trust (FNGT) and the advantages the trust and its US beneficiaries have enjoyed up until that point will fall away. It is important to understand what the requirements are for the US beneficiary post FGT and the options available for the US beneficiaries at the time the trust becomes a FNGT. Failure to consider these requirements and take the appropriate action can cause severe tax consequences for any US beneficiary therefore formal advice should always be taken.

For further information on Foreign Grantor Trusts, please contact Nerine.