Florida ACTEC Fellows Institute
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Generation-Skipping Transfer Taxation
Problem Set
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Identifying the Transferor and Shifts in the Identity of the Transferor – (§2652(a); Reg. §26.2652-1(a)(1), (a)(2), (a)(5) Examples 1, 3, 5 and 9, (b) and (c))

1. Identify the transferor for generation-skipping transfer tax purposes. Tina created a discretionary trust for the benefit of all of her issue in 2018. She gave $1,000,000 to the trustee of the trust. The gift was protected from gift tax by the credit against gift tax allowed by § 2505. The trustee had the power to distribute any portion of the trust income and principal to any one or more of the beneficiaries at any time. (Reg. §26.2652-1(a)(2))

Generation Assignment (§2651; Reg. §26.2651-2;)

2. Which of the individuals identified in the chart are assigned, for generation-skipping transfer tax purposes, to the generation of Tina's children? Which of them are assigned to the generation of her grandchildren?

3. To which generation are the entities listed below assigned?

   a. The University of Miami.

   b. The Tina Family Partnership, the partners of which are Sam, Debby, George, and Grace

4. If Tina and Harry had adopted Debby, what generation would she be assigned to with respect to Tina?

5. Would your answer to the preceding question change if Debby were Sam's biological child?

6. Assume that Debby dies and that Grace is adopted by the new wife of her father. Does Grace's generation assignment with respect to Tina change?

7. Assume that Tina adopts Corinne. Will Corinne's generation assignment with respect to Tina change?

8. Assume that Debby is Tina's biological child and that she marries Christopher.

a. Will Debby's generation assignment change?

b. Will Christopher's generation assignment change?

9. Assume that Sam marries Corinne. Will Corinne's generation assignment change?

Interest (§2652(c); Reg. §26.2612-1(e))

In the case of each of the trusts described below, identify the beneficiaries who have interests for generation-skipping transfer tax purposes.

10. Tina created a trust to pay income to Debby for 10 years, remainder to Grace.

11. Tina created a trust for the benefit of all of her issue. The trustees have the power to distribute any portion of the income or principal of the trust to any one or more of them.

12. Tina created a trust for the benefit of Grace for life. The trustees have the power to distribute any portion of the income or principal of the trust to her at any time. Debby has a power to appoint any portion of the trust property to any of Tina's issue (other than herself) at any time.

    a. Suppose Grace, instead of Debby, had the power to appoint trust property to any of Tina's issue (other than herself).

    b. Suppose the trustees had the power to use trust income or principal for Grace's support.

13. Tina created a trust for the benefit of all of the issue of her children and the Miami Art Museum. The trustees have the power to distribute any portion of the income or principal of the trust to any one or more of them.

14. Suppose the trustee of the trust described in the preceding question was required to distribute at least 1% of the value of the trust fund each year to the Miami Art Museum.

15. Tina created a trust to pay George an annuity for life and to pay the remainder at George's death to the University of Miami. The trust satisfied the requirements of §664 for charitable remainder trusts.

Trust and Trustee (§2652(b); Reg. §26.2652-1(b) and (c))

16. Which of the following arrangements would be treated as a trust for generation-skipping transfer tax purposes? As to any arrangement treated as a trust, who is the trustee?

    a. Tina gives a life estate in Blackacre to Debby, remainder to Grace.

    b. Tina buys an annuity contract to pay $20,000 per year to Sam for life and then to pay $20,000 to George for life if George survives Sam.

    c. Tina buys a life insurance policy on her life. She designates George and Grace as beneficiaries. She retains ownership of the policy until her death.

    d. Tina gives $50,000 to Debby as custodian for Grace under the Uniform Gifts to Minors Act.

    e. Tina bequeathed $100,000 to each of Sam and Debby. Her will provides that if either of them fails to survive her by 7 months, his or her bequest will pass to his or her child.

Skip Person and Non-Skip Person (§2613; Reg. §26.2612-1(d))

17. Is the trust described in question 1 a skip person?

    a. Would your answer change if during the first five years of the trust the trustees were permitted to make distributions only to George and Grace?

    b. Would your answer change if during the first five years of the trust the trustees were not permitted to make any distributions?

    c. Would your answer change if at the end of five years, distributions could be made to Tina's children only if none of her more remote issue were living?

18. Tina created a trust to pay income to George for life, remainder to Sam or if he is not living, to Gigi. Is the trust a skip person?

19. Would your answer to the preceding question change if the trustee also had the power to pay trust income to the Metropolitan Museum of Art?

20. Tina created a trust to pay a charity, to be selected each year by the trustees, an annuity of $50,000 for five years. At the end of the five year

period the trustees were directed to pay the trust principal to George or if he is not then living to Tina's children then living in equal shares. Is the trust a skip person?

Direct Skips (§§ 2603(a)(2) and (3), 2515, 2612(c), 2623; Reg. §2612-1(a))

21. Tina gave $1,000,000 to Grace in 2018. Is Tina's gift a direct skip?

22. Tina died in 2018 and bequeathed $1,000,000 to Grace. Is the bequest a direct skip?

23. Was any part of Tina's gift to the trust described in question 1 a direct skip? (§2612(c)(2))

24. Tina died in 2018 and bequeathed $1,000,000 to a discretionary trust for the benefit of Tina's issue. The trustees have the power to distribute any portion of the income or principal of the trust to any one or more of them.

    a. Did Tina's death cause a direct skip to occur?

    b. Would your answer change if the trustees were not permitted to make any distributions to Sam and Debby?

    c. Would your answer change if the prohibition against distributions to Sam and Debby were to last for only 5 years?

    d. Would your answer change if there were a prohibition against distributions to any person for a five year period and at the end of the 5 year period distributions were permitted to be made to any of Tina's issue?

    e. Would your answer change if there were a prohibition against distributions to any person for a five-year period and at the end of the 5-year period distributions were permitted to be made to any of Tina's grandchildren or more remote descendants or any charity selected by the trustees?

Taxable Terminations (§§ 2603(a)(2), 2612(a), 2622; Reg. §26.2612(b))

25. Tina created a trust to pay Sam income for life. At Sam's death, the trustees will continue to hold the property for the benefit of his issue. The trust property was worth $1,000,000 at his death. Will Sam's death be a taxable termination?

26. Suppose the trust described in the previous question was a trust to pay Tina income for life. At her death, the trustees will continue to hold the property for the benefit of Sam's issue. Will Tina's death be a taxable termination?

27. Tina created a trust to pay income to Sam for life. At Sam's death, the trustees will distribute the trust property to a separate trust created by Tina at the same time she created Sam's Trust. The recipient separate trust is held for the benefit of all of Tina's issue. The trustees will have the power to distribute any portion of the income or principal of the trust to any one or more of them. Sam will die and will be survived by Debby.

    a. Will Sam's death be a taxable termination?

    b. Would your answer change if the trustees were not permitted to make any distributions to Debby?

    c. Would your answer change if the prohibition against distributions to Debby were to last for only 5 years?

Taxable Distributions (§§ 2603(a)(1), 2611(b)(1), 2612(b), 2621; Reg. § 26.2612-1(c))

28. Tina created a discretionary trust for all of her issue. The trustees have the power to distribute any portion of the income or principal of the trust to any one or more of them. In 2018, the trustees distributed $10,000 to George to help him to pay his graduate school expenses. Is the distribution a taxable distribution?

29. The trustees of the trust described in the preceding question wrote a $10,000 check to the university George is attending to pay a portion of George's graduate school tuition.

    a. Is the distribution a taxable distribution?

    b. Is the distribution a generation-skipping transfer?

30. Tina created a discretionary trust for all of her issue. The trustees also had the power to distribute trust property to other separate trusts the only beneficiaries of which were any one or more of Tina's issue and charity. The trustees exercised this power and distributed $1,000,000 to a separate trust for the benefit of Tina's issue. The trustees will have the power to distribute any portion of the income or principal of the trust to any one or more of them.

a. Will the distribution from the original trust to the new trust be a taxable distribution?

b. Would your answer change if the trustees of the new trust were not permitted to make any distributions to Sam or Debby?

c. Would your answer change if the prohibition against distributions to Sam and Debby were to last for only 5 years?

d. Would your answer change if there were a prohibition against distributions to any person for a five-year period and at the end of the 5-year period distributions were permitted to be made to any of Tina's issue?

31. Tina created a discretionary trust for the benefit of all of her issue, Trust A. The terms of the trust provided that on the death of the first of Sam and Debby to die, the trustees would distribute one-half of the trust fund to a separate trust for the benefit of the deceased child's issue, Trust B. Sam dies. Will the required distribution to Trust B be a taxable distribution?

Allocations of GST Exemption at Death (§§ 2631, 2632(a) and (e), 2641, 2642(a) and (b)(2))

32. Tina died in 2018. She bequeathed $100,000 to George. Her executor will allocate $75,000 of her GST exemption to the bequest on a timely filed estate tax return.

a. What is the applicable fraction for the bequest?

b. What is the inclusion ratio for the bequest?

c. What amount of generation-skipping transfer tax will be imposed on the bequest?

33. Tina died in 2018. She bequeathed $100,000 to George. She also bequeathed $4,900,000 to a trust to pay income to Grace for life, remainder to be paid to Grace's issue. At the time of Tina's death, $4,000,000 of her GST exemption remained. At Tina's death, no trusts created by her during her life were in existence. Her executor will neglect to allocate any GST exemption to either bequest.

a. What will the inclusion ratio for the bequest to George be?

b. Assume that Tina's will did not contain any direction as to the funds to be used to pay the generation-skipping transfer tax on George's bequest. What amount of generation-skipping transfer tax will be imposed on the bequest?

Allocation to Direct Skips During Life (§ 2632(b))

34. In 2018 Tina gave $100,000 to a discretionary trust for George's benefit. The trustees had the power to make distributions to him at any time. They had no power to make distributions to any other person. Tina will not allocate any GST exemption to the gift on her gift tax return. At the time of her gift, she had $1,500,000 of remaining GST exemption.

    a. What is the inclusion ratio for the gift?

    b. What amount of generation-skipping transfer tax will be imposed on the gift?

Transfers During Life That Are Neither Direct nor Indirect Skips (2642(b)(1), (3))

35. In 2000, before the effective date of § 2632(c), Tina gave $1,000,000 to a discretionary trust for all of her issue. The trustees have the power to distribute any portion of the income or principal of the trust to any one or more of them. Tina filed a timely gift tax return on April 15, 2001. On that date the trust property was worth $2,000,000. She allocated $1,000,000 of her GST exemption to the transfer.

    a. What is the trust's inclusion ratio?

    b. Would your answer be different if Tina allocated her GST exemption to the transfer on a gift tax return that was not timely filed? Suppose the value of the property was $2,000,000 on the date of the late allocation.

    c. Suppose the trust property was worth only $250,000 on the date of the late allocation. How much exemption would she need to allocate in order for the trust to have a zero inclusion ratio?

36. On January 1, 2019, the trustees of the trust described in the preceding question distributed $100,000 to George. Assume that Tina had made a late GST exemption allocation of $1,000,000 to the trust when its assets were worth $2,000,000. What amount of generation-skipping transfer tax will be imposed on this distribution?

Indirect Skips During Life (§ 2632(c))

37. In 2004, Tina gave $1,000,000 to a trust to pay Debby income for life and to pay the remainder to George and Grace in equal shares at her death. The trustees were required to pay Debby 1/3rd of the trust principal on her 45th birthday. Tina did not file a timely gift tax return. She thought she was not required to file because her gift was protected from gift tax by the §2505 credit. On October 31, 2005, Tina filed a gift tax return and allocated $250,000 worth of her GST exemption to the trust. On that date the trust property was worth $2,000,000.

    a. What is the trust's inclusion ratio?

    b. Would your answer be different if the trustees were required to pay Debby 1/3rd of the principal on the later to occur of her 45th birthday or the death of Tina?

    c. Would your answer be different if there were no mandatory distribution provisions but the trust agreement provided that, for a thirty day period after each of Tina's first $30,000 worth of transfers to the trust in any year, each of Debby, George and Grace had the power to withdraw property worth $10,000 from the trust. At the end of the 30 day period, their withdrawal power would lapse to the extent that the lapse would not be treated as a transfer by reason of §2514(e). Assume that Tina's transfer to the trust was $30,000 rather than $1,000,000 and that she will transfer another $30,000 in the next year.

The Estate Tax Inclusion Period Rule (§ 2642(f))

38. In January of 2015, Tina gave $1,000,000 to a grantor retained annuity trust. Under the terms of the trust agreement, Tina retained the right to an annuity of $349,459 each year for three years. At the end of the 3 year period, the trust property is to pass outright to her issue then living, per stirpes. Based on an assumed §7520 rate of 2.4%, the value of the trust remainder at the beginning of the trust was $2.32.

    a. May Tina allocate GST exemption to the trust on a timely filed 2015 gift tax return?

    b. When would such allocation be effective?

    c. Suppose the terms of the trust required the trustee to pay the trust property to Grace at the end of the 3 year period. Tina allocates GST exemption to the trust on her 2018 gift tax return filed in April 2019. When will the allocation be effective?

Charitable Lead Trusts (§ 2642(e))

39. In January of 2016, Tina gave $1,000,000 to a 3-year charitable lead unitrust. Under the terms of the trust agreement, charity was to receive a unitrust amount equal to 35% of the value of the trust property each year for three years, determined at the beginning of each year. At the end of the 3 year period, the trust property is to pass outright to Tina's grandchildren then living. Based on an assumed §7520 rate of 2.4%, the value of the trust remainder at the beginning of the trust was $285,151.

    a. How much GST exemption must Tina allocate to the trust on a timely filed 2016 gift tax return in order to achieve a zero inclusion ratio?

    b. When would the allocation be effective?

40. In January of 2016, Tina gave $1,000,000 to a 3-year charitable lead annuity trust. Under the terms of the trust agreement, charity was to receive an annuity of $349,459 each year for three years. Based on a §7520 rate of 2.4%, the value of the trust remainder at the beginning of the trust was $2.32. At the end of the 3 year period, the trust property is to pass outright to Tina's grandchildren then living.

    a. May Tina allocate GST exemption to the trust on a timely filed 2016 gift tax return?

    b. When would such allocation be effective?

Charitable Remainder Trusts (§2652(c))

41. In 2015, Tina gave $1,000,000 to a trust to pay George $57,000 each year for 20 years, and to pay the remainder at the end of 20 years one-half to the University of Miami and one-half to the Florida Grand Opera. The trust meets the requirements of §664. The actuarial value of charity's interest in the trust on the date of its creation (assuming a 2.4% §7520 rate) is $102,968.

    a. Is Tina's transfer a direct skip?

    b. How much GST exemption was needed to achieve an inclusion ratio of zero for the trust?

Inclusion Ratio of Nontaxable Gifts to Skip Persons (§ 2642(c))

42. In 2018, Tina gave an outright gift of $15,000 to Grace. At the time of the gift she had no remaining GST exemption. She made no other gifts to Grace in 2018.

    a. Is the gift a generation-skipping transfer?

    b. What is its inclusion ratio?

43. Suppose that the gift described in Question 42 had been a gift to a discretionary trust of which Grace, George, Sam and Debby were beneficiaries. Suppose that Grace had the right to withdraw $15,000 for 30 days after the gift.

    a. Is the gift a generation-skipping transfer?

    b. What is its inclusion ratio?

44. Suppose that Tina deposited $15,000 in 2018 in an account in the Florida College Investment Plan. The plan is qualified under § 529 of the Code. She named Grace as the beneficiary. At the time of the gift she had no remaining GST exemption. She made no other gifts to Grace in 2018.

    a. Is the gift a generation-skipping transfer?

    b. What is its inclusion ratio?

Severance and the Separate Share Rule (§§ 645, 663, 2642(a)(3), 2654)

45. Tina created a trust for the benefit of George and Debby and Debby's issue in 2018. She made a gift of $1,000,000 to the trust. The trustees were required to distribute ½ of the trust's income to each of George and Debby for 5 years. No principal distributions were permitted. At the end of the 5 years, the trustees are required to divide the trust into two equal shares. One share was to be held in a separate trust for the benefit of Sam's issue. The other share was to be held in a separate trust for the benefit of Debby and her issue. The trustees of each separate trust will have the power to distribute income and principal to any of the beneficiaries of each separate trust. The 5-year period will end in 2023.

    a. Was Tina's gift to the trust a direct skip?

    b. Will the end of the 5-year period be a taxable termination?

c. Will the actual division of the trust into two separate trusts, one for Debby and her issue and one for Sam's issue, be a taxable termination?

46. Would your answers to the preceding questions change if the trustee had the power to distribute trust principal to either George or Debby during the first 5 years?

47. Tina created a trust for the benefit of George and George's issue and Debby and Debby's issue in 1999. She made a gift of $1,000,000 to the trust and allocated GST exemption of $500,000 to the trust. The trustees had the discretion to distribute income and principal to any of the beneficiaries. The trust is to terminate at Tina's death. At that time, the trustees are to distribute ½ of the trust property to Debby or to her issue if she dies before Tina and ½ to George or to his issue if he dies before Tina. In 2015, pursuant to applicable state law, the trustee divided the trust into two equal trusts, Trust 1 and Trust 2. The terms of the new trusts were identical except that each has different beneficiaries. Debby and her issue are the beneficiaries of Trust 1 and George and his issue are the beneficiaries of Trust 2.

a. Will the severance cause a taxable termination to occur?

b. If so, is there any way to avoid the generation-skipping transfer tax on the taxable termination?

c. Would your answers be different if the trustee had divided the trust into two separate shares rather than two separate trusts?

48. What steps could the trustees of the trust described in Question 35 have taken to avoid the generation-skipping transfer tax payable in Question 36?

Multiple Skips (§2653(a))

49. In 2008 Tina created a discretionary trust for the benefit of all of her issue. Sam and Debby died on December 31, 2012. In 2018, the trustee made a distribution of $10,000 to George and a $10,000 distribution to Gigi. Is either distribution a taxable distribution?

50. Suppose that the terms of the trust described in question 1 above provided that no distributions could be made to George or Grace for five years after the death of the survivor of Debby and Sam and that Debby and Sam died on December 31, 2012. Distributions could be made to Gigi during this five-year period.

a. Would distributions made to Gigi in 2016 be taxable distributions?

b. Would distributions made to Gigi in 2018, when distributions could also be made to George and Grace be taxable distributions?

Predeceased Ancestor Exception (§2651(e))

51. In 2015 Tina created a discretionary trust for the benefit of all of her issue. The trustee had the power to distribute trust income and principal to any of Tina's issue at any time.

    a. Assume that Sam had died in 2008. Will distributions from the trust to George and Grace be treated as taxable distributions?

    b. Assume that Sam died 1 month after Tina created the trust. Will distributions from the trust to George and Grace be treated as taxable distributions?

    c. Assume that the trust had been created under Tina's will and that Sam died 1 month after Tina's death. Will distributions from the trust to George and Grace be treated as taxable distributions?

52. Suppose the trust described in Question 51 included the issue of Tina's sister Sue as beneficiaries. Assume that Nancy, Sue's daughter, had died in 2003. Will distributions from the trust to Gwen be treated as taxable distributions?

Redetermining Inclusion Ratio (§§2642(d) and 2653(b))

53. In 2013, Tina created a discretionary trust for the benefit of Harry, Sam and George. The trustee had the power to distribute trust income or principal to Harry, Sam, or George at any time, provided that, if any portion of the trust property was included in Tina's gross estate and if Harry survived her, the trust property was to remain in trust solely for Harry's benefit for the rest of his life. In that case, the trustees would be required to distribute all trust income to him at least annually. The trust was to terminate on the death of the survivor of the three of Harry, Sam and George. On the death of the survivor, the trust property was to be paid to Sam's then living issue. Tina funded the trust with a $10 million life insurance policy on her life. The policy had a value for gift tax purposes at the time of the transfer of $25,000. Under the rules of §2632(c), $25,000 of Tina's GST exemption was automatically allocated to the trust. Tina made no further transfers to the trust. She died in 2015. The $10 million worth of life insurance proceeds collected by the trust was included in Tina's gross estate under §2035 because she had died within

three years of her transfer of the policy to the trust. What is the trust's inclusion ratio after Tina's death?

54. In 2000, Tina created a discretionary trust for the benefit of Debby and Grace. The trustee had the power to distribute trust income or principal to either or both of Debby and Grace at any time. Tina transferred $1 million to the trust and made a timely allocation of $750,000 of GST exemption to the trust. The property is now worth $2,000,000. How much GST exemption must Tina allocate to the trust now in order to achieve an inclusion ratio of zero?

55. In 2000, Tina created a discretionary trust for the benefit of Debby and Grace. The trustee had the power to distribute trust income or principal to either or both of Debby and Grace at any time. The trust is not a GST trust. Tina transferred $1,000,000 to the trust and made a timely allocation of $800,000 of GST exemption to the trust. In 2016, on a date when the trust property was worth $1,200,000, Tina gave the trust an additional $200,000.

    a. What is the new inclusion ratio of the trust?

    b. How much GST exemption must Tina allocate to the trust in order to achieve an inclusion ratio of zero?

    c. Suppose Tina does not make a timely GST exemption allocation with respect to her 2016 gift. She made the allocation on November 1, 2017 when the trust property was worth $1,600,000. How much GST exemption must she allocate to the trust in order to achieve an inclusion ratio of zero?

Retroactive Allocations (§2632(d))

56. In 1999 Tina created a trust to pay Debby income until her 40th birthday. At that time the trust was to terminate and the trustees were to pay all trust property to Debby. If Debby died before reaching age 40, the trust was to terminate and all of the trust property was to be paid to Grace. Tina transferred $1,000,000 to the trust. She did not allocate any GST exemption to the trust. She has never allocated any of her GST exemption. Debby died in an automobile accident in 2018, survived by Grace. The trust property was then worth $2,000,000. Is there any way to avoid the imposition of the generation-skipping transfer tax on the trust as a result of Debby's unexpected death?

Spousal Rules (§2652(a)(2) and (3))

57. Tina died in 2015. She bequeathed $2,000,000 to a trust to pay Harry income for life, remainder to Debby if Debby survives Harry. If Debby does not survive Harry, the trust property is to be paid to Grace. Tina's executor made a qualified terminable interest property ("QTIP") election with respect to the trust.

    a. Who is the transferor of the trust after Harry's death?

    b. Assume that Tina's executor made a reverse QTIP election for the trust under §2652(a)(3). Who is the transferor of the trust after Harry's death?

    c. Assume that the executor allocated $2,000,000 of Tina's GST exemption to the trust, that the trust will be worth $4,000,000 when Harry dies and that Harry's estate will pay the $1,600,000 of estate taxes imposed on the trust when he dies. Who is the transferor of the trust after Harry's death?

58. Assume that the trust described in Question 57 was worth $2 million when Harry died, that Tina's executor had made an election pursuant to §2652(a)(3) for the trust and had allocated Tina's remaining $1 million GST exemption to the trust. Assume that Debby died after Tina but before Harry. When Harry died he had no assets and had $1 million worth of GST exemption remaining.

    a. Will Harry's death be a taxable termination?

    b. What will the applicable fraction and inclusion ratio of the trust be immediately after Harry's death?

Relief Provisions (§2642(g))

59. In 2000 Tina created a discretionary trust for the benefit of all of her issue. She gave $25,000 to the trust. For the 30-day period after her transfer to the trust, each of the 5 beneficiaries had the right to withdraw $5,000 from the trust. The trustee had the power to distribute any portion of the trust income and principal to any one or more of the beneficiaries at any time. Tina's accountant advised her not to file a gift tax return to report her gifts to the trust because the gift was protected by the annual gift tax exclusion provided in §2503(b). The trust property is now worth $10,000,000. Tina has $6 million of exemption left. Tina's new accountant has just informed her that this trust will be subject to the generation-skipping transfer tax on the death of the last to die of Sam and Debby and that the trustees'

distributions to George, Grace and Gigi, which will be treated as taxable distributions, will be subject to the generation-skipping transfer tax. Can this problem be fixed?

Application to Nonresident Aliens (§2663(2))

60. *Assume for purposes of this question that Tina, Sam and George are nonresident aliens ("NRA"), but that all other individuals are U.S. citizens.* In 2018 Tina made a gift of $100,000 worth of the shares of SunTrust Banks, Inc. to Grace, a U.S. person. Assume SunTrust is a U.S. corporation. Is the transfer a direct skip?