TAXES

INGS: Extraordinary Planning Tool to Reduce Income Tax - Even for Those in Income Tax-Free States

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Welcome...

ING Trust and Related Planning

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Introduction to INGs in the Current Tax Environment

The big switch for planning for wealthy individuals:

- **From estate tax planning,**
- **To Income Tax Planning,**
- **Driven by…**
- **Individual income tax changes largely temporary (until 2026).**
- **Estate tax exemption doubling, rate limited to 40% (although some states have independent systems increasing the rate to up to 50% or more)**
- **Some individual income tax changes (alimony changes, effective for "divorces" after 2018) are permanent,**
- **Enhanced standard deduction (close to doubled)**
- **Most individual itemized deductions eliminated**
- **State and local taxes (SALT) deduction limited to $10,000 a year including estates and trusts. ($5,000 for married filing separately).**

SALT Limit Impact on State Income Tax and Other Limitations

Two adverse effects:

- **Lower Federal income tax rate (37% instead of 39.6%) making the value of deduction allow worth less.**
- **$10,000 per year deduction limit—and its not just for state (and local) income taxes but real estate, sales and all other state and local taxes.**
- **Good news: the cutback on most itemized deduction under Section 68 (Pease rule) also has been eliminated.**
- **Example: Californian has $1,000,000 of AGI and pays $80,000 in California state income tax. Last year, the entire $80,000 (without regard to Section 68) was income tax deductible reducing her Federal income taxes by $31,680 (39.6 x $80,000), meaning the $80,000 in California income tax cost her $48,320. Now none of it is deductible (assuming the taxpayer takes the standard deduction or has $10,000 of other SALT (e.g., real estate), meaning the $80,000 in California income tax cost her $80,000.**
- **What can be done?**

Building a Traditional “ING” - 1

- **<u>Goal</u>: Build a trust, transfers to which are not completed gifts, and which is not grantor.**
- **<u>Complete and Incomplete Gifts</u>. The [Internal Revenue] Code states that if a donor ‘transfers property by gift,’ such donor will be liable for a gift tax. However, not all transfers of property are considered ‘gifts’ or, more appropriately, ‘completed gifts.’ This is important because only completed gifts are taxable gifts.” The ElderLaw Portfolio Series, Margolis (Editor), (Aspen Publications 2007), sec. 4-4.**
- **Reg. § 25.2511-2(b)(fourth sentence) provides, "For example, if a donor transfers property to another in trust to pay the income to the donor or accumulate it in the discretion of the trustee, and the donor retains a testamentary power to appoint the remainder among his descendants, no portion of the transfer is a completed gift."**

Building a Traditional "ING" - 2

- Reg. §25.2511-2(c)(second sentence) provides, "A gift is also incomplete if and to the extent that a reserved power gives the donor the power to...change the interests of the beneficiaries as between themselves....Thus, if an estate for life is transferred but, by an exercise of a power, the estate may be terminated or cut down by the donor...the transfer constitutes an incomplete gift."
- Conclusion: The grantor must retain sufficient control to render the transfers incomplete. Now, of course, that will mean estate tax inclusion. But estate tax savings is not the goal for many. The goal is to avoid grantor trust status while rendering the gift incomplete AND to allow the grantor to receive the assets back. In other cases a completed gift may be desirable to use temporary exemption, but that requires a non-traditional ING approach (or the use of a different type of non-grantor trust).
- Practice Note: For gifts to be incomplete, the grantor must retain control over income as well as principal. Note also that transfers that are completed gifts can achieve the same income tax results as incomplete gifts.

Use a Trust To Avoid State Income Tax…but…Avoid Grantor Status

- State taxation of trusts: States impose their income taxes on a trust created by a state resident in various ways: residence of the grantor; residence of the trustee; residence of the beneficiaries. (And some states impose their income taxes on the trust even if the grantor was not a resident of the state.
- Many of these grounds have been struck down as invalid and the list continues to grow.
- Can't Avoid: But avoiding state income tax on the income earned in a trust created by a state resident fails (in almost all cases) if the trust is a grantor trust, or if the income is "source" income to that a state (e.g., a business conducted in-state).
- The income of a grantor trust is imputed to the grantor under Section 671 and, if the state imposes it's income tax on the grantor Federal AGI, the state will tax the income imputed to the grantor under the grantor trust rules.
- Goals: So we have to avoid state income tax on a trust that is not a grantor trust. But how can we have a trust that is an incomplete gift, can pay assets to the grantor, and still not be a grantor trust?

Key is use of an Adverse Party - 1

- **Sections 676 and 677 provide that if the corpus or income of the trust can be paid to the grantor or the grantor’s spouse, it will be a grantor trust, foiling the goal of avoiding state income tax.**
- **Moreover, several other Sections cause grantor trust status where the grantor (or the grantor’s spouse) have control.**
- **Each of these has an exception: Essentially, none of these applies if the consent of an adverse party is required. (Note that some of the administrative powers under Section 675 do not have adverse party exceptions).**
- PS: Note that if it a foreign trust, grantor trust status essentially can’t be avoided. But putting foreign trust status aside, how we avoid grantor trust status under all of the Sections?

Key is use of an Adverse Party - 2

- Nonadverse party is defined in Section 672(b) as someone who is not an adverse party.
- Adverse party is defined in Section 672(a) as "any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise of nonexercise of the power which he possesses respecting the trust."
- Unfortunately, whether a person is adverse depends on the facts, not a formula or a mere definition. The IRS, however, has consistently ruled (privately) that under the facts presented in the ruling, the beneficiaries of a trust on a designated committee are "adverse".
- In any case, distributions from an ING must require the consent of an adverse party (essentially a beneficiary with a "substantial" interest, other than the grantor or the grantor's spouse) to comply.

Key is use of an Adverse Party - 3

– The Regulations require that the adverse party have a substantial beneficial interest in the trust which would be adversely affected by the exercise or non-exercise of the power. There is, unfortunately, little clarity on the delineation of what is "substantial." Thus, there may be more risk into the use of the adverse party mechanism to preserve or achieve non-grantor trust status then many realize. Treas. Reg. Sec. 1.672(a)-1(a).

Basic ING Structure: Incomplete Gift

- **The retention of a properly drafted special power of appointment exercisable only by Will falls outside of the Section 674 grantor trust provision but can make gifts to the trust incomplete.**
- **A lifetime special power of appointment falls outside of the Section 674 power if it is limited to the distribution OF CORPUS pursuant to a reasonably definite standard (e.g., HEMS), and such a power does not prevent the transfers to the trust being incomplete gifts if the power is held in a non-fiduciary capacity.**
- **In some rulings, the "Distribution Committee" is called the "Power of Appointment Committee," but it is only a name change.**
- **So, the grantor also retains: (1) a testamentary power of appointment, and (2) a lifetime power, held in a non-fiduciary capacity, to distribute trust corpus to one or more beneficiaries (other than himself or herself) pursuant to a health, education, maintenance and support standard.**
- **Note that the testamentary power of appointment cannot include accumulated income unless the income was accumulated with the approval or consent of an adverse party.**
- **The IRS has consistently ruled that the above grantor's powers render the gifts to the ING trust as incomplete. Why?**

Gifts and Adverse Parties

- **Although the grantor may hold these powers in conjunction with members of the Distribution Committee for gift tax purposes, although they are adverse for income tax purposes.”**
- **The reason is that they are only co-holders of the powers, not takers in default for gift tax purposes and for gift tax purposes a co-holder of a power is adverse only if he or she will succeed to the power upon the grantor’s death.**
- **Under the ING Trust structure, the Distribution Committee (and its powers) disappears when the grantor dies and therefore no member succeeds to the power.**

Gift Incompleteness While Avoiding Grantor Trust Status

- A power to distribute pursuant to a HEMS standard does not make the gift complete a completed gift if the power is held in a non-fiduciary capacity, which is what the grantor retains in an ING trust.
- Although the grantor may hold consent powers in conjunction with members of the Distribution Committee, that does not mean they are adverse to the grantor for gift tax purposes. The reason is that they are only co-holders of the powers, not takers in default for gift tax purposes. For gift tax purposes a co-holder of a power is adverse only if he or she will succeed to the power upon the grantor's death. Under the ING Trust structure, the Distribution Committee (and its powers) disappears when the grantor dies.
- The IRS has consistently ruled that Section 673 does not apply as the interest coming back to the grantor is not a reversion within the meaning of the Section. Read Blattmachr & Lipkind, "Fundamentals of DING Type Trusts," 26 Probate Practice Reporter (April 2014) for a detailed discussion.
- But what about Section 676 and 677 that cause a trust to be a grantor trust if distributions can be made to the grantor or the grantor's spouse unless they only can be made with the consent of an adverse party? And note above the IRS has ruled that the members of the Distribution Committee are not adverse for gift tax purposes.

More on Avoiding Grantor Trust Status

- **<u>673</u>: If the grantor (or the grantor's spouse) holds a reversionary interest in the trust described in IRC Section 673, it will be a grantor trust.**

- **The IRS has consistently ruled that Section 673 does not apply as the interest coming back to the grantor is not a reversion within the meaning of the Section. Read Blattmachr & Lipkind, "Fundamentals of DING Type Trusts," 26 Probate Practice Reporter 1 (April 2014), for a more detailed discussion.**

- **<u>676, 677</u>: If income or corpus must or may be distributed to or for the grantor (or the grantor's spouse) as described in IRC Section 676 or IRC Section 677, it will be a grantor trust. Hence, for the trust not to be a grantor trust (one of the results sought in the PLRs), these provisions must be avoided.**

- **Section 676 and 677 that cause a trust to be a grantor trust if distributions can be made to the grantor or the grantor's spouse <u>unless</u> they only can be made with the consent of an <u>adverse</u> party? And AS noteD above the IRS has ruled that the members of the Distribution Committee are not adverse for *gift tax* purposes. But they are adverse for income tax purposes because they are takers in default for *grantor trust* purposes.**

Where Should The ING Trust Be Sited?

- **If creditors of the grantor can attach the trust assets, the trust will be a grantor trust. Similarly, the trust will be included in the grantor's gross estate for Federal estate tax purposes although this latter point is generally unimportant for a traditional ING Trust as the grantor's powers that render the gift incomplete will cause it to be included in the grantor's gross estate.**

- **Argument DAPT state not needed: The trustee does not have authority to distribute property to the grantor, only members of the Distribution Committee, acting in a non-fiduciary capacity, can. Therefore, a creditor would not have the power to attach the trust property. So, an ING could be formed anywhere and not be tainted as grantor. The reason is that a trust is a self-settled trust only to the extent the trustee (as opposed to anyone else) can distributed to the grantor.**

- **Use DAPT state: But don't take the risk. Have the trust located in one of the 18 DAPT states and all ING rulings have involved only such states—to wit, Alaska, Delaware, Nevada, South Dakota and Wyoming.**

- **Other factors: In choosing a state, consider other factors such as how long property may remain in trust, state income tax, ease of administration, trustee's fees and trustee experience with ING Trusts.**

- **Other Steps: Regardless of which state you choose, minimize the ability of the grantor's domicile state to disregard the selected applicable law of the trust by maximizing the nexus of the chosen state with the trust assets and minimize the ability of the grantor's domicile state to assert that the trust violates a material public policy of the grantor's domicile state.**

- **Do DAPTs Work: Consider that some practitioners argue that DAPTs do not work for those domiciled in non-DAPT jurisdictions**

Do Members of The Committee Hold General Powers of Appointment?

- Because the gifts to the traditional ING trust are incomplete, a distribution to the grantor is not a gift.
- However, a distribution to someone other than the grantor is a gift by the grantor. (If the distribution to the grantor's spouse it should qualify for the gift tax marital deduction if the spouse is a US citizen.)
- However, in Release 2007-127, the IRS asked for comments about whether members of the Distribution Committee hold general powers of appointment. Comments were made by various professional groups virtually all concluding no member held a general power. No guidance has been published but no further PLRs were issued.
- However, the IRS has issued favorable rulings where there will always been at least two members of the Distribution Committee at all times so they do not succeed to the power alone and, accordingly, can't be deemed to hold a general power of appointment.

New York and ING Trusts

- New York tax law provides that a trust created by a New Yorker is not subject to New York income tax if there is no New York trustee, no New York source income, and no New York situs asset in the trust.
- So it seems New Yorkers could successfully create ING Trusts. But New York tax law has been amended (2014) to provide that if transfers to the trust are not completed gifts and the trust is not a grantor trust under the Internal Revenue Code, the trust will still be treated as a grantor trust for New York income tax purposes.
- This NY anti-ING trust provision is of questionable constitutionality.
- In any case, the provision can be avoided by making the transfers to the trust complete, by having the grantor not retain the special testamentary power or the HEMS lifetime power. Because of the temporary (until 2026) increase of $5.5mm to $11mm in the gift tax exemption, creating an ING trust of $5.5mm by a New Yorker "works."
- Note that making transfers to the trust completed gifts they need not be included in the grantor's gross estate if created in a DAPT state. See, e.g., PLR 200949012 (not precedent), involving a trust created under Alaska law.

New York – Additional Rules

New York has also passed statutes which provide:

- that if more than 50% of an entity contains New York real estate, the sale of the entity will constitute New York source income;
- that if a resident trust (i.e., a trust created by a New York domiciliary) has any New York source income (even $0.01) then all of the accumulated income of the trust (even $ billions) will be subject to New York income taxation; and
- that if all the partners of a partnership or limited liability company which engages in an active trade or business in New York sell all of their interests to a single purchaser (contemplate a ING owning some of those interests), then the transaction will be taxed as if the entity sold its assets (i.e., generating source income).

How Can ING Trusts Help Save Federal Income Taxes?

- Three big changes under the 2017 Act as to individuals: (1) increase in the standard deduction, eliminating any benefit of any deduction (e.g., for charitable contributions) unless they exceed the standard deduction; (2) the Section 199A deduction but essentially only if the income of a the taxpayer falls under a threshold (e.g., $157,500) see detailed discussion at end of PowerPoint; (3) the $10,000 annual limit on the deduction under Federal law for state and local taxes (SALT).
- Non-grantor trusts can help ameliorate these results by: (1) having the trust pay gross income over to charity for a deduction under Section 642(c); (2) having the trust pay $10,000 in SALTs, e.g. property taxes on a home owned by the trust, and (3) having the trust be an owner in a non-C corp trade or business to entitled it to a 20% Section 199A deduction.
- Any non-grantor trust, including an ING Trust, may be used for such purposes. And even if the ING trust falls under the new NY law providing it will be treated as a grantor trust for New York tax purposes, it still will be treated as a non-grantor trust for Federal income tax purposes (or a completed gift variant may be used as explained above).

Additional Uses of INGs

- Toggling.
  - To convert an existing grantor trust into a non-grantor trust, the grantor, and spouse, would have to release all the powers in the instrument that would taint it as a grantor trust.
  - Can you convert/decant an existing grantor trust into a non-grantor trust?
- Matrimonial.
  - Exclusion of income from personal income tax returns that would otherwise be included.
- PPVLI.
- Income Shifting.
- Spraying income to low tax bracket beneficiaries.
  - This may be deemed a gift by the Grantor of an incomplete gift ING.

Additional Drafting Guidance - 1

- Using community property to fund an ING trust—why the double step up in basis will apply if the grantor dies while the trust is in existence and, therefore, included in his or her estate.
- Why this should occur if a married couple creates Alaska community property by placing property in an Alaska Community Property Trust.
- Ensuring each Distribution Committee member is an adverse party for grantor trust purposes by each having a meaningful interest both as a lifetime beneficiary and a remainder beneficiary.
- Deciding whether to seek a PLR.
- How to provide the grantor with a testamentary power of appointment without making the trust a grantor trust.

Additional Drafting Guidance - 2

- Structuring the Committee of beneficiaries: increasing the committee; dealing with members who are minors; providing for a "safe" beneficiary.
- Adverse party: a single person or a committee or either?
- Providing for the Obama tax.
- What is needed (and what does not work) to make gifts incomplete.
- Including a "Non-Grantor Trust Article."
- What to provide if all members of beneficiary Committee die or resign.

Administering the ING as a Non-Grantor Trust

- It may not be sufficient to craft the trust instrument as a non-grantor trust, the trust must also be administered in a manner that conforms to the non-grantor trust requirements.
- If the trustee unbeknownst to the practitioner purchases life insurance on the grantor's life, and pays a premium, that might characterize the trust in whole or part as a grantor trust.
- What if a loan is made to the settlor and the interest rate or security is inadequate? Should loans be prohibited? Even if prohibited by the instrument the trustee's authorized action of making a loan might undermine the intended non-grantor status.
- If the instrument prohibits distributions to the settlor's spouse without the consent of an adverse party, what if the trustee makes a distribution without such consent?
- What if the trustee or a protector acts in a manner that suggests an implied agreement to benefit the grantor thereby undermining non-grantor status?
- Perhaps, new types of savings language should be added to non-grantor trust instruments?

ING Summary and Conclusions

- ING Trust have been consistently approved by the IRS in dozens of private rulings, although the exact terms have varied over time.
- These trusts must be created in DAPT states (e.g., Alaska, Nevada or Delaware) and must permit the grantor to hold a lifetime special power (not all do) without subjecting the trust to the grantor's creators which will cause the trust to be a grantor trust.
- Special care in drafting must be taken and some consideration may be given to obtaining a PLR although it likely is not necessary in all cases.
- New York's anti-ING Trust provision may be unconstitutional and can be avoided by making the gifts to the trust complete.
- Although primarily used to eliminate state income taxes, ING Trusts like any grantor trust may help in obtaining charitable deduction benefits, the Section 199A deduction and obtaining a larger deduction for SALT.

Using INGs to Circumvent 199A Taxable Income Threshold

Additional Discussion

199A and ING Trust Planning – The Big Picture

- "Moderate" wealth may be a wide range from perhaps $5M to as much as $40M relative to the new high exemption amounts. 3 key factors affect current planning:
- High temporary exemptions $22M/couple, mean plan now. Reduced by ½ in 2026 but could be adversely affected by a new administration before then.
- Income tax considerations and State and Local Tax (SALT) deductions change the face and goals of planning.
- Access to assets transferred is more critical than ever with the large dollars that have to be transferred to use exemption currently. This is critical to avoid the so-called buyer's remorse that affected many 2012 last minute estate planning transactions. In many of those plans the transferor/donor made large wealth transfers in the rush of the December 31, 2012 anticipated deadline, and thereafter could not access those funds. In 2018 transfers might need to exceed the $5.6M that the exemption may decline to in 2026 before any exemption benefit is preserved. Second, in 2012 the most irrevocable trusts created to hold gifts and other transfers were structured as grantor trusts. This permitted the spouse to have access and the settlor to borrow trust funds without adequate security. In the current 2018 planning environment it will be advantageous to structure many of the trusts to receive gifts as non-grantor trusts. This will require more complex planning to achieve goals that will appear contradictory. This is explained at greater length below.
- Consider having one spouse not both use exemption thereby preserving more exemption.

Can Client Gift Entity Interests to Heirs/Non-Grantor Trust?

- Client wants to maximize the Section 199A deduction but has high taxable income. So the Client gifts business interests to his or her "heirs" in lower income tax bracket below the threshold amount.
- Does it work?
- For a partnership (LLC taxed as partnership, GP or FLP) will Section 704(e) (the Family Partnership Rule) and the requirement that capital be a material income producing factor impede the effectiveness of the gift? This is discussed below.
- Can a taxpayer use several non-grantor trusts? This is discussed below in the context of the new Prop. Regs under 643(f).

The 704(e) Hurdle to 199A Planning Transfers

- How might 199A interact with the family partnership rules of Code Section 704(e) which might prevent allocating income from a gifted or bargain sale partnership interest to a family member if certain requirements are not met?
- It might be advantageous for a client to transfer qualified business (QB) interests to a family member, such as a child, who has taxable income below the threshold in order to maximize the 199A deduction. Doing so, if the entity is a partnership or LLC taxed as a partnership would also have to pass muster under the Code Sec. 704(e) rules for that donee to be recognized as the owner of the partnership interest.
- With the new doubled estate tax exemption, there will be little or no gift tax disincentive to making such gifts for income tax planning purposes.

Might non-grantor ING trusts work?

- Each non-grantor trust may be able to take a Section 199A deduction and have its own thresholds.
- Hence, each such trust can have QBI and, if not in excess of the threshold for single filers (that is, not in excess of $157,500), take an above the line deduction, equal to 20% of its QBI.
- The balance of the income can be separately taxed to the trust (and assuming the income is not deemed distributed to beneficiaries as DNI) and have its own deduction for state and local income tax (up to $10k).
- Note that, if the QBI is not state (e.g., New York) source income that is subject to state income tax, it is likely the non-grantor trust can be structured to avoid state income tax. But what about the multiple trust rule under section 643(f) under which than two trusts can be considered one trust?
- The Prop. Regs include multiple trust regulations. It may be kept in mind that Proposed Regs have no force of law. But what will clients think?

Threshold Amount for Trusts

- For trusts and trust beneficiaries the $157,500 threshold is measured at the trust level without taking into account any distribution deduction for "Distributable Net Income" (DNI) distributed to beneficiaries.
- Sec. 1.199A-6(d)(3)(iii) states: For purposes of determining whether a trust or estate has taxable income that exceeds the threshold amount, the taxable income of a trust or estate is determined before taking into account any distribution deduction under sections 651 or 661.

Threshold Amount for Trusts-Example

- **Example**: If A was to establish an ING trust that owns a portion of a flow-through entity for the benefit of B, the trust can accept $157,500 of taxable income without being subject to any limitations of Section 199A. If the ING trust made a distribution to B of $50,000 and retained $157,500 for the taxable year, the trust would be considered to have $207,500 in taxable income for the year, and would be subject to the wage/Qualified Property limitation of Section 199A.
- If the ING trust exceeds the $157,500 threshold, then the trust and trust beneficiaries must each satisfy the wage/Qualified Property test, with wages and Qualified Property being allocated among the trust and the trust beneficiaries in proportion to DNI distributed to the beneficiaries or retained by the trust. For example, if the ING trust has $257,500 of income and distributes $100,000 of income to a trust beneficiary, then the trust exceeds the $157,500 threshold and wages and qualified property would be allocated 61% ($157,500 / $257,500) to the trust and 39% ($100,000 / $257,500) to the beneficiary.

Prop. Regs 643(f) – Multiple Trusts - How Many INGs?

- The proposed regulations contain an anti-income tax avoidance rule under Section 643(f) to treat multiple trusts as a single trust in certain cases.
- The proposed regulations would establish anti-abuse rules under section 643(f) to prevent taxpayers from establishing multiple non-grantor trusts or contributing additional capital to multiple existing non-grantor trusts in order to avoid Federal income tax, including abuse of section 199A.
- So if you are not establishing a new trust, not contributing new capital to existing trusts, and not creating multiple trusts, might some planning remain viable? Might the conversion of grantor SLATs to non-grantor trusts avoid this new rule in the Prop. Regs?
- Section 643(f) further provides that, for these purposes, two spouses are treated as a single person.

Multiple Trust Proposed Regs

- The proposed regulations would establish anti-abuse rules under section 643(f) to prevent taxpayers from establishing multiple non-grantor trusts or contributing additional capital to multiple existing non-grantor trusts in order to avoid federal income tax, including abuse of section 199A.
- in the case in which two or more trusts have: (1) substantially the same grantor or grantors; and (2) substantially the same primary beneficiary or beneficiaries, and (3) a principal purpose for establishing such trusts or contributing additional cash or other property to such trusts is the avoidance of Federal income tax, then such trusts will be treated as a single trust for Federal income tax purposes.

What is a "Principal Purpose" Under 199A?

- A principal purpose. A principal purpose for establishing or funding a trust will be presumed if it results in a significant income tax benefit unless there is a significant non-tax (or non-income tax) purpose that could not have been achieved without the creation of these separate trusts.
- If the trust uses the client's temporary exemption and provides asset protection, neither of which could have been achieved without the trusts involved (certainly one non-grantor trust, perhaps more than one), a principal purpose of income tax avoidance should not be presumed.

Example from Prop. Regs.

- Example 2. (i) X establishes two irrevocable trusts: one for the benefit of X's son, G, and the other for X's daughter, H. G is the income beneficiary of the first trust and the trustee is required to apply all income currently to G for G's life. H is the remainder beneficiary of the first trust. H is an income beneficiary of the second trust and the trust instrument permits the trustee to accumulate or to pay income, in its discretion, to H for H's education, support, and maintenance. The trustee also may pay income or corpus for G's medical expenses. H is the remainder beneficiary of the second trust and will receive the trust corpus upon G's death.
- (ii) Under these facts, there are significant non-tax differences between the substantive terms of the two trusts, so tax avoidance will not be presumed to be a principal purpose for the establishment or funding of the separate trusts. Accordingly**, in the absence of other facts or circumstances that would indicate that a principal purpose for creating the two separate trusts was income tax avoidance**, the two trusts will not be aggregated and treated as a single trust for Federal income tax purposes under this section.

Prop. Regs 643(f) – Multiple Trusts

- Proposed Reg. 1.199A-6(d)(3)(v) provides, under a heading saying Multiple Trusts, that trusts formed or funded with a significant purpose of receiving a deduction under section 199A will not be respected for purposes of section 199A.
- If the client had created and funded grantor trusts in 2012 with family business interests and now converts those trusts by decanting into non-grantor trusts should that work?

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