1. Introduction
   b. Grantor: Entity vs. Owner(s). Effects
   c. Split-Interest Trusts: Charitable Remainder Trusts (CRTs) and Charitable Lead Trusts (CLTs).

2. Basic Charitable Deduction Rules
   a. Individuals: Section 170
      i. Percentage Limitation on Contribution Base (20% to 50%)
      ii. Type of Property
      iii. Tax Nature of the Property (e.g., ordinary income property)
      iv. Type of Charitable Recipient
      v. “For the Use” vs. “To.”
      vi. Other Limitations. See, e.g., Sections 170(a)(3), 170(f).
   b. Trusts: Section 642(c)
      i. Requirements (paid, or for estates also set aside, from gross income, pursuant to the terms of the governing instrument, for a charitable purpose).
      ii. Limitation if paid from unrelated business income (UBI).
          Section 681. But Does Not Apply to Estate. Use Section 645.
      iii. Meaning of UBI. Effect of Section.
   c. Corporations: Section 170(a)
      i. 10% Reduction Limitation
      ii. Special Rules.
   d. S-Corporations and Partnerships: Section 170(a)
i. But Pass Through to Shareholders or Partners: Sections 1366(a)(1)(A) and 702(a)(4).


iii. Allowed Even If Trust Does Not Provide for Charitable Payments


3. More on Donations by Individuals by Split-Interest Trusts
   a. Reg. §1.170A-8(a)(2): Contribution of an income interest is “for the use” of charity; contribution of a remainder is “to” charity.
   b. Hence, contribution to a CRT falls under the “normal” limitations (e.g., 20%, 30% or 50%).
   c. Reg. § 1.170A-8(c): Donations “For the Use” of Charity
      i. 20% Limitation
      ii. Deficit Reduction Act of 1984 Change (So 30%)
      iii. Appreciated Property and Private Foundation Charities.

4. Donations to Split-Interest Trusts by Non-Grantor Trusts
   a. PLR 9821029 (not precedent): CRT was treated as created by a non-grantor trust through the exercise of a special power of appointment held by an individual beneficiary of the trust.
   b. No mention of Section 642(c) deduction.
   c. Add Special Power by Decanting (e.g., EPTL 10-6.6).
   d. CLT: Grantor or Non-Grantor Trust.

5. Deduction for Creation of CLT
   a. Section 170(f)(2)(B)
      i. Only If a Grantor Trust.
iii. Recapture of Deduction When Grantor Trust Status Ends: Code (Total Income Imputed) vs. Regulations (Total Payments to Charity) ¹

iv. Payment Due Upon Death.

b. Non-Grantor Trust CLT
   i. Section 642(c) Deduction (Maybe, Limited by Section 681).
   ii. Ordering Rule of Income Paid.

6. Split-Interest Trusts Created by Corporations or Partnerships
   a. PLR 9205031 (not precedent) and PLR 8102093: CRT Could Be Created by C corporation; PLR 9340043: CRT Could Be Created by S corporation; PLR 9419021 and PLR 199952071: CRT Could Be Created by Partnership (or LLC Treated as Partnership).
   b. Reasons for Entity to Create CRT.
      i. Same as for Individuals.
      ii. Cannot Distribute to Shareholder(s) or Partner(s) Tax Free.
   c. PLR 9512002: S corporation Could Create Charitable Lead Trust; PLR 8145101: C Corporation Could Create Charitable Lead Trust.
      (These were non-grantor trust CLATs.)

7. Determining If the Entity or Its Owner(s) Created the Split-Interest Trust.
   a. This Is Important Where the Deduction Is Not Passed Through (C Corporation)
   b. Where a Non-Grantor Trust Is a Partner, a Section 642(c) Deduction May Be Unlimited. (But Does Section 681 Apply If Trust Uses UBI?). Rev. Rul. 2005-4.

c. Treas. Reg. § 1.671-2(e)(4) provides:

“If a gratuitous transfer is made by a partnership or corporation to a trust and is for a business purpose of the partnership or corporation, the partnership or corporation will generally be treated as the grantor of the trust. For example, if a partnership makes a gratuitous transfer to a trust in order to secure a legal obligation of the partnership to a third party unrelated to the partnership, the partnership will be treated as the grantor of the trust. However, if a partnership or corporation makes a gratuitous transfer to a trust that is not for a business purpose of the partnership or corporation but is for the personal purposes of one or more of the partners or shareholders, the gratuitous transfer will be treated as a constructive distribution to such partners or shareholders under federal tax principles and the partners or the shareholders will be treated as the grantors of the trust. For example, if a partnership makes a gratuitous transfer to a trust that is for the benefit of a child of a partner, the gratuitous transfer will be treated as a distribution to the partner under section 731 and a subsequent gratuitous transfer by the partner to the trust.” (Emphasis added.)

d. How To Ensure the Creation of the CRT or CLT Is For a Business Purpose of the Entity:

i. General Contributions for the Community Where the Business Operates

   b. Even If the Partner or Shareholder Is Viewed as the Grantor (Which It Is Not), a Trust Can Be Kept from “Dying.

9. Charitable Lead Trusts and Life Insurance: Setting the Record Straight:
   a. Problem: Only CLTs That Are Grantor Trusts Entitled the Grantor to an Income Tax Deduction But Without Any Further Deduction on Income Earned and That Is Paid to Charity
   b. Solutions Sought: No or Low Taxable Income
      i. Fund the CLT With Municipal Bonds
         1. Return So Low (or Risky) CLT Likely Will Fail.
         2. Section 7520 Rate Greater than Municipal Bond Rates.
      ii. Fund the CLT with a Roth IRA.
         1. Worthwhile?
         2. Can a Roth IRA Be Transferred to a Grantor Trust?²
      iii. Fund the CLT with a Paid Up Non-MEC Life Policy
         1. MEC vs. Non-MEC
         2. No Application of Section 170(h)(10)
      iv. Fund a Shark-Fin CLAT with Large Life Policy and a Little Cash

1. Can Low Payments Be Made Annually? 

2. Recapture Upon Death? Vested Solution?

v. Fund the CLAT with Cash and a Policy That Is Not Paid Up

1. Doomsday Result Under Section 170(f)(10)

2. No Income Tax Deduction, No Gift Tax Deduction, IRS “Confiscation” of All Assets

3. The Uncertainty Principle

vi. Fund the CLAT with Cash and Substitute a Non-MEC Policy Late

1. Self-Dealing Under Section 4941

2. Step Transaction and Section 170(f)(10)

10. Summary and Conclusions

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