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THE IRREVOCABLE INTER VIVOS TRUST: INCOME AND ESTATE TAX CONSEQUENCES TO THE DONOR AND THE TRUSTEE

MASON WALSH, JR.*

One of the most useful estate planning mechanisms for substantial estates is the irrevocable inter vivos trust. Such a trust might provide that all the income from the trust property be paid to the donor's wife (or child) for life with the income beneficiary having a power of appointment by will limited as to objects so as not to cause the trust property to be includible in her estate for federal estate tax purposes. In addition, the trustee might be given discretion to distribute corpus to or for the benefit of the income beneficiary either (a) in the trustee's absolute discretion, (b) according to a standard relating to the beneficiary's health, maintenance, support or education, or (c) according to a broader standard, such as the beneficiary's benefit, comfort, welfare or happiness. A somewhat varied form of trust might provide that the trustee may in his discretion distribute income and corpus to or for the benefit of the primary beneficiary (donor's child), the primary beneficiary's spouse, issue and spouses of issue. The primary beneficiary might be given a limited power to appoint by will, in default of the exercise of which the trust continues for the other beneficiaries.

The substantial tax savings from such an irrevocable trust are obvious. By payment of the gift tax at three-fourths of the estate tax rates, the trust property is removed from the donor's highest estate tax bracket and instead taxed at the donor's then lowest gift tax bracket. Any appreciation in the value of the trust property during the donor's lifetime will escape estate tax at the donor's death. The income from the trust property will be taxed to the trust beneficiaries who are frequently in lower income tax brackets than the donor. If the trustee is given discretion to accumulate or to spray the income among several beneficiaries, the income will be taxed to the trust to the extent it is accumulated. Depending on the nature of the relationship between the donor and the trustee[1] and the extent of the powers granted the trustee in the trust instrument, there are serious income and estate tax consequences that may be incurred by the donor and the trustee.

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1. As used in this article, "independent trustee" means one who is not a related or subordinate party subservient to the wishes of the grantor within the meaning of Sections 672(c) and 674(c) of the Internal Revenue Code of 1954; "disinterested trustee" means one who has no interest in the trust and who may not benefit therefrom; and "interested trustee" means one who is a beneficiary of the trust or who has an interest therein.

I. INCOME TAX CONSEQUENCES TO THE DONOR

If the trust requires all the income to be paid to a beneficiary for life, anyone, including the donor, the primary beneficiary or an interested trustee, may be given the power to distribute corpus to the primary beneficiary (whether or not the power is required to be exercised in relation to a standard in respect of the primary beneficiary's status) without causing the trust income to be taxed to the donor. This is because the distribution of corpus by the trustee to the beneficiary comes from the share of the beneficiary.[2]

If the trust provides for spraying of income and corpus among a group of beneficiaries in the absolute discretion of the trustee, this discretion must be vested in an independent trustee in order to avoid having the trust income taxed to the donor.[3] The discretion to distribute corpus among the beneficiaries may be given to anyone so long as the power is limited by a reasonably definite standard set forth in the trust instrument.[4] If the donor vests in an independent trustee the power to spray income among the beneficiaries, the donor may himself retain the power to distribute corpus according to a proper standard. A power exercisable solely by a trustee or trustees other than the donor or his spouse, to distribute, apportion or accumulate trust income to or for a beneficiary or beneficiaries will not cause the trust income to be taxed to the donor, if the power is limited by a reasonably definite external standard set forth in the trust instrument.[5]

2. Section 674(b)(5)(B) of the Code permits anyone to have the power to distribute corpus to or for any current income beneficiary, provided that the distribution of corpus must be charged against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

3. The exception for independent trustees in Section 674(c) of the Code provides that subsection (a) (which taxes the trust income to the donor where the beneficial enjoyment of the corpus or the income of the trust is subject to a power of disposition, exercisable by the donor or a nonadverse party, or both, without the approval or consent of an adverse party) will not apply to a power solely exercisable by trustees, none of whom is the grantor and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor to distribute or accumulate income to or for or to pay out corpus for a beneficiary or class of beneficiaries. If the donor's spouse or son or any other relative or "subordinate" person serves as a co-trustee with an independent trustee, such as a bank, the trustees are "independent" for the purposes of this section.

4. INT. REV. CODE OF 1954, § 674(b)(5)(A). An acceptable standard is one relating to the "education, support, maintenance or health" of the beneficiary or "to enable him to maintain his accustomed standard of living." A power to distribute corpus for the pleasure, desire or happiness of the beneficiary is not acceptable. Reg. § 1.674(b)-1(b)(5)(i). The Regulations take the position that where the trust instrument provides that the determination of the trustee shall be conclusive with respect to the exercise or nonexercise of such a power, the power is not limited by a reasonably definite standard.

5. INT. REV. CODE OF 1954, § 674(d). An exception to this exception applies where any person has a power to add to the beneficiaries of income or corpus except to provide for after-born or after-adopted children.

It may be desirable to include in the trust a limited power of appointment exercisable by the primary beneficiary during his lifetime in favor of his spouse, issue and spouses of issue. There is a risk of adverse income tax consequences to the donor if such a power is included.[6] To avoid the income tax risk to the donor, it might be advisable to defer for ten years the exercise of the limited power of appointment by deed in order to come within Section 674(b)(2).[7] The exercise by the primary beneficiary of a limited power to appoint by deed will probably result in a taxable gift by the primary beneficiary of the present value of the life estate in the trust property appointed.[8] Because of the serious income tax risk to the donor, it is questioned whether an irrevocable inter vivos trust should include a limited power of appointment by deed.

The donor will be taxed on the income of any portion of the trust in respect of which certain powers of administration are exercisable in a nonfiduciary capacity by any person without the approval or consent of one in a fiduciary capacity.[9] Anyone, even the donor or his spouse, may

6. The power is literally within Section 674(a) of the Code as a power of disposition of the beneficial enjoyment of the corpus of the trust. The power of appointment is not exempt under Section 674(b)(5)(A) because no standard is imposed in respect of the power. Section 674(b)(5)(B) does not exempt the power because the appointment by the primary beneficiary does not result in the corpus being charged against the share of corpus of the beneficiary or beneficiaries in whose favor the power is exercised. It is arguable that the primary beneficiary's own interest in the trust is adverse to his exercise of the limited power of appointment during his lifetime so that the existence of the power would not cause the income to be taxable to the donor under Section 674(a) of the Code. However, if the only persons in whose favor the power may be exercised are members of the primary beneficiary's family, it is likely that the primary beneficiary has no real interest adverse to the exercise of the power.

7. Section 674(b)(2) exempts a power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the expiration of a period of ten years. If the donor is living at the expiration of ten years from the creation of the trust, the primary beneficiary should consider postponing for another ten years the exercise of the power. Under Section 674(b)(2) the initial postponement of the exercise of the power must be for ten years. Section 674(b)(2) will cause the income to be taxed to the donor after the expiration of the ten-year period unless the power is "relinquished." Section 673(d) treats a postponement of the date specified for reacquisition of an interest in either the corpus or the income as a new transfer and it is arguable that the power may be "relinquished" under Section 674(b)(2) for a limited period as an interest may be "postponed" for a limited period under Section 673(d). On the other hand, Section 674(b)(2) in speaking of a power "relinquished" may not contemplate a relinquishment for a term of years but rather a permanent relinquishment. The Regulations appear to permit a postponement of the exercise of the power prior to the expiration of the original ten-year period of deferral. Reg. § 1.674(b)-1(b)(2).

8. The decision in Self v. United States, 142 F. Supp. 939 (Ct. Cl. 1956), held the exercise of a limited power of appointment by deed was not subject to gift tax. The Regulations take the contrary and seemingly more sound position that the exercise results in a taxable transfer of the donee's income interest. Reg. § 25.2514-1(b)(2).

9. Int. Rev. Code of 1954, § 675(4). The proscribed powers of administration include the power to vote or direct the voting of, and to control the investment of trust funds

possess powers of administration so long as such powers are held in a fiduciary capacity without causing adverse income tax consequences to the donor. The power, in the donor, or a nonadverse party, or both, without the approval or consent of an adverse party, to purchase, exchange or deal with the income or corpus of the trust for less than an adequate consideration will cause the trust income to be taxable to the donor,[10] as will the power to borrow the income or corpus without adequate interest or adequate security.[11]

II. ESTATE TAX CONSEQUENCES TO THE DONOR

To avoid adverse estate tax consequences to the donor, it is necessary to avoid Sections 2036, 2037 and 2038 of the Code which apply only where powers or interests are retained by the donor. Further, there must be no agreement that the trustee will act as the donor dictates.[12] If these safeguards are followed, there is no need to have an independent trustee or even a disinterested trustee to avoid adverse estate tax consequences to the donor. The nature of the trustee's relationship to the donor is not important so long as the donor has not retained any of the proscribed powers or interests and so long as no such prearrangement exists with the trustee.

If there exists any agreement or understanding between the donor and the trustee that the trustee exercise his judgment in a certain manner, the trustee's powers would be considered held by the donor.[13] Attribution to the donor of the trustee's power to distribute income or corpus will cause the trust property to be includible in the donor's gross estate under either Section 2036 or Section 2038 of the Code.

consisting of, stocks of corporations in which the holdings of the donor and the trust are significant for purposes of voting control, and the power to reacquire the trust corpus by substituting other property of equivalent value.

10. INT. REV. CODE OF 1954, § 675(1).

11. INT. REV. CODE OF 1954, § 675(2). An exception exists where the trustee (other than the donor) is authorized to make loans to any person without regard to interest or security. If the donor has borrowed from the trust and has not completely repaid the loan before the beginning of a taxable year, that year's income will be taxed to the donor unless the loan was made by an independent trustee and is for adequate interest and adequate security. INT. REV. CODE OF 1954, § 675(3).

12. Estate of Maria M. Coxe Skinner v. United States, 316 F.2d 517 (3d Cir. 1963), affirmed the trial court's finding that there was a prearrangement between the donor and the trustees (a bank and an individual) that the trustees' discretion to spray income among the donor and several members of the donor's family would be exercised exclusively in favor of the donor for her life. During her life, the donor received all the income from the trust. The court held that the trust property was taxable in the donor's estate under Section 2036 of the Code as a transfer with a retained life estate. The finding of a prearrangement between the donor and the trustees was based on the facts that the donor's original gift tax return claimed she had a retained life estate and that the donor received all the income.

13. Similarly if the donor has the unrestricted power to remove the trustee and appoint

The donor may not, without adverse estate tax consequences, participate as a trustee in the discretionary spraying of income and corpus among a group of beneficiaries.[14] If the donor is to serve as a trustee, care must be taken not to repose in the donor-trustee broad administrative, management or investment powers or the trust property may be includible in his estate on the ground that the powers are equivalent to a power to control the beneficial enjoyment of the trust property.[15] It has been held that broad administrative powers reserved by the donor-co-trustee cause the trust property to be includible in his gross estate under Section 2036.[16] Recent decisions have held that similar broad powers of the trustees had to be exercised by the donor-co-trustee in a fiduciary capacity and their exercise was subject to supervision and control by the local courts.[17] Despite the recent successes of the taxpayer in this area, it is apparent that the safer approach for federal estate tax

himself trustee, he will be deemed to have retained the powers given to the trustee. Reg. § 20.2036-1(b)(3) and Reg. § 20.2038-1(a)(3).

14. Such a power is within Section 2036 as the right to designate the persons who shall possess or enjoy the trust property or the income. Such a power is also within Section 2038 as a power to alter or amend the trust by changing the beneficiaries or the amounts they receive. Florida National Bank of Jacksonville, Florida v. United States, 336 F.2d 598 (3d Cir. 1964), *cert. denied*, 380 U.S. 911 (1965).

15. INT. REV. CODE OF 1954, § 2036(a).

16. State Street Trust Co. v. United States, 263 F.2d 635 (1st Cir. 1959). The trustees were given powers to invest in any kind of property, including wasting assets and nonincome-producing property, to allocate receipts and charges between income and principal, and to exchange property for other property without reference to the value of the properties involved in the exchange.

17. Broad administrative powers to borrow from anyone, to charge expenses against principal or income, to determine whether certain dividends constitute income or principal and to do all acts that an owner might do, deemed to be retained by the donor because of his retained power to substitute himself as trustee, were not so broad as to permit the trustee to materially vary the enjoyment of the interests between the beneficiaries. The trust instrument called for good faith on the part of the trustee as required by the relevant principles of equity. Estate of Pierre Jay Wurts, T.C. MEMO 1960-102, *appeal to 3d Cir. dismissed*. The donor's retention of the power to control the trustee in the exercise of its powers and to direct the sale of trust properties and the reinvestment in any kind of property, even though speculative, did not cause the trust property to be includible in the donor's gross estate because, as a fiduciary under New York law, he had an obligation to administer the trust for the benefit of the beneficiaries. Estate of Willard V. King, 37 T.C. 973 (1963). United States v. Powell, 307 F.2d 821 (10th Cir. 1962), held that broad powers of investment had to be exercised by the trustees, one of whom was the donor, so as to preserve a fair balance between the income beneficiary and the remainderman and any abuse of the exercise was subject to correction by a court of equity. The Tax Court refused to follow State Street Trust Co. in Estate of Aline P. Peters, T.C. MEMO 1964-167, where the donor, as a co-trustee, reserved to herself the sole discretion in the management and investment of the trust corpus and, during her lifetime, had powers to determine what was income and what was principal, to invest in any kind of property even though the same was not of a character approved for trust funds, and to determine values in making division of the property among the beneficiaries. The powers of management reserved to the donor, though broad, were not such as to cause the trust property to be includible in her gross estate.

purposes is not to have the donor serve as a trustee. In any event, the powers to allocate receipts between income and principal, to determine what is income and what is principal, to exchange property without regard to values, to determine values on division or distribution, to invest in any kind of property, and to exercise voting control of closely held securities, should be reposed in a trustee or trustees other than the donor. It is no longer sufficient to rely on a savings clause in the trust instrument to the effect that the powers given the trustee shall be construed or restricted so as to avoid the adverse tax consequences.[18]

III. INCOME TAX CONSEQUENCES TO THE TRUSTEE

To avoid having the trust income taxed to a trustee other than the donor, the trustee must not have a power exercisable solely by himself to vest the income or corpus in himself.[19] A trustee-beneficiary may, together with an independent trustee or a disinterested trustee, be given the power to spray income and corpus of the trust among the trust beneficiaries without any adverse income tax consequences to the trustee.[20] The nature of the relationship between the donor and the trustee is immaterial for purposes of income tax consequences to the trustee so long as the trustee may not, by himself, vest the income or corpus in himself. As pointed out in Part I, the example in footnote 20 would cause the trust income to be taxable to the donor if the co-trustee serving with the son is an interested or a disinterested trustee,[21] whereas if the co-trustee is an independent trustee, no adverse income tax consequences

18. Rev. Rul. 65-144, I.R.B. 1965-22, 25, held ineffective a savings clause in a trust instrument which provided that if any of the powers granted the trustees would defeat the charitable deduction sought to be obtained in the creation of the trust, then those powers were revoked to the extent necessary to make them consistent with and conform to the provisions of the Internal Revenue Code and Regulations to the end that the charitable remainder would be deductible for federal gift tax purposes. The trustees were given discretion to allocate certain charges between income and corpus and to apportion certain dividends between income and corpus so that substantial portions of the trust property could be diverted from charitable to noncharitable purposes. The Ruling holds that the savings clause was an attempt to impose a condition subsequent with respect to certain powers otherwise granted to the trustees which was wholly void and ineffective in law because contrary to public policy.

19. INT. REV. CODE OF 1954, § 678(a). Examples are where the sole trustee may invade the trust corpus or use the trust income for his own benefit, or where the trustee has the power by himself to spray income among a class of beneficiaries, including himself. The trustee will be taxable on the trust income if he has previously partially released or modified such a power and after the release or modification retains such control as would under Sections 671 through 677, cause the income to be taxable to the donor. A trustee or co-trustee having a power to apply the trust income to the support or maintenance of a person whom he is obligated to support or maintain will be taxable on the income to the extent it is so applied. INT. REV. CODE OF 1954, § 678(c).

20. For example, the donor's son and a bank could be permitted to spray the income and corpus among the son, his spouse, issue and spouses of issue.

21. INT. REV. CODE OF 1954, § 674(a).

will flow to the donor.[22] If the power in the beneficiary-trustee to vest income or corpus in himself is limited by an ascertainable standard relating to the beneficiary's health, maintenance, support or education, Section 678(a) should not be applicable.[23] Once the donor has died, the son and a disinterested trustee may be given the power to spray income and corpus without adverse income tax consequences to the trustees.

IV. ESTATE TAX CONSEQUENCES TO THE TRUSTEE

The trust property is included in the estate of the trustee only if the trustee is deemed to have a general power of appointment over the trust property.[24] A power in the trustee-income beneficiary to use corpus for his own benefit constitutes a general power of appointment. So long as the discretionary power to distribute corpus is vested in a disinterested trustee, there will be no adverse estate tax consequences to the trustee.[25] If the discretionary power to distribute corpus is given to a beneficiary, the power should be exercisable by an ascertainable standard relating to the beneficiary's health, maintenance, support or education.[26]

Certain broadly described administrative powers, such as the power to invest, to decide what is income and what is corpus and to vote stock of a closely held family corporation, if vested in the beneficiary-trustee, may be deemed general powers of appointment for estate tax purposes.[27]

It is immaterial whether the discretionary power to distribute corpus is held by the beneficiary-trustee in a fiduciary capacity or in an individual capacity. The test that governs in determining estate tax consequences is the possession of a general power of appointment over property. A recent decision[28] held that where the trustees, one of whom was an in-

22. *Id.* at § 674(c).

23. In such a case, the beneficiary's power would not be exercisable solely by himself. See Cox, *Income and Estate Tax Aspects of Surviving Spouse Beneficiary Serving as Executor-Trustee: Effect of Stranger as Co-Trustee*, N.Y.U. 22d INST. ON FED. TAX. 1041, 1044-47 (1964).

24. INT. REV. CODE OF 1954, § 2041(a)(2). A general power of appointment is a power exercisable in favor of the decedent, his estate, his creditors or the creditors of his estate. INT. REV. CODE OF 1954, § 2041(b)(1). If the trustee has a general power of appointment he will be deemed owner of the trust property for federal estate tax purposes.

25. We are not here dealing with the problem of a related and subordinate trustee; it is only required that the trustee not be a beneficiary and have no interest in the trust, *i.e.*, he be a disinterested trustee.

26. INT. REV. CODE OF 1954, § 2041(b)(1)(A) excludes from the definition of a general power of appointment a power to consume or invade property limited by an ascertainable standard relating to the beneficiary's health, maintenance, support or education.

27. Reg. § 20.2041-1(b)(1). Such would be the case if the powers are exercisable in the trustee's uncontrolled discretion and permit the beneficiary-trustee to shift the beneficial interests in the trust property.

28. Strite v. McGinnes, 330 F.2d 234 (3d Cir. 1964), *cert. denied*, 379 U.S. 836, *rehear. denied*, 379 U.S. 910 (1964). The use of the words "benefit" and "comfort" went beyond the standard permitted by Section 2041(b)(1)(A), and the breadth of the power given to the

come beneficiary, had the power to invade the trust corpus when in the judgment of the trustees "it is at any time necessary or advisable to provide for the reasonable needs and proper expenses or the benefit or comfort" of the income beneficiary, the income beneficiary possessed a general power of appointment and the trust property was includible in her gross estate.

If there is any agreement or understanding between a beneficiary and the trustee that the trustee will exercise his judgment as trustee in favor of a certain beneficiary or in accordance with the wishes of the beneficiary, adverse estate tax consequences may result to the beneficiary. If such an agreement is found to exist, the powers of the trustee would be considered held by the beneficiary.[29]

Absent an agreement between the beneficiary and the trustee, the beneficiary of a discretionary corpus distribution trust cannot compel the trustee to make distributions to him so long as the trustee does not abuse the discretion conferred upon him.[30] In a recent Pennsylvania decision,[31] the government contended that an income beneficiary possessed a general power of appointment where an independent corporate trustee had the power to advance portions of the corpus of the trust estate to or for the use or benefit of the income beneficiary "at such times, in such amounts, and for such purposes as my Trustee in its discretion may deem advisable." The court held that the beneficiary did not possess a general power of appointment. The trustee alone was vested with the discretion to invade the trust corpus, which discretion had to be exercised reasonably, and for the benefit of the beneficiaries, considering their needs and other available assets. The trustee's power to distribute corpus was subject to control by the courts of Pennsylvania to prevent any abuse in the exercise thereof.

A somewhat different situation may exist if a power of invasion given to the independent or disinterested trustee is limited by a standard which does not meet the test of Section 2041(b)(1)(A). If the standard relates to the "benefit," "comfort" or "welfare" of the beneficiary, the government may contend that the beneficiary is able to go into court whenever the situation prescribed by the standard occurs and compel the trustee to distribute in compliance with the standard. If so, the government

beneficiary-trustee was not restricted to matters relating to her health, maintenance, support or education.

29. Attribution to the beneficiary of the trustee's discretionary power to spray income or corpus will cause the trust property to be includible in the beneficiary's gross estate as subject to a general power of appointment. INT. REV. CODE OF 1954, § 2041(a)(2).

30. 2 SCOTT, TRUSTS § 187 (2d ed. 1956).

31. Security-Peoples Trust Company v. United States, 238 F. Supp. 40 (W.D. Pa. 1965). The government contended that the beneficiary possessed a taxable general power of appointment because under Pennsylvania law, the beneficiary could compel the trustee to pay over corpus under the standard.

could contend that the beneficiary himself is deemed to possess the power to withdraw corpus limited by the standard contained in the trust instrument and since the standard does not meet the test of Section 2041(b)(1)(A), the beneficiary is deemed to possess a general power of appointment.[32] For this reason, it is advisable to either vest in an independent trustee or in a disinterested trustee absolute discretion to distribute corpus without regard to any standard whatever or to utilize an ascertainable standard relating to the beneficiary's health, maintenance, support or education.

V. SUMMARY AND CONCLUSIONS

It should be obvious that the provisions of the Internal Revenue Code which govern in determining the income and estate tax consequences to the donor and the trustee of an irrevocable inter vivos trust are extremely complicated. The occurrence of these tax consequences depends to a great extent on the nature of the relationship between the donor and the trustee and the extent of the powers granted the trustee in the trust instrument.[33] Even if the trustee is so selected and his powers are so limited to assure that the trust income will be attributed to someone other than the donor for income tax purposes, there is no assurance that the income will not be taxed to the trustee or that the trust corpus will not be includible in either the donor's or the trustee's estate for federal estate tax purposes. So also, the fact that the trust is so drawn to protect the donor from adverse estate tax consequences will not necessarily guarantee that the income will not be taxed to the donor or necessarily protect the trustee from adverse income or estate tax consequences. Thus, it is necessary to make certain that the trust meets all four tests necessary to avoid adverse income and estate tax consequences to the donor and to the trustee. Further, as has been seen, what is necessary to meet the four tests depends on the time at which one is making the determination and the circumstances existing at that time.

We find that there is from time to time a changing definition of the trustee who can possess and exercise the powers in question without having any of the specified adverse tax consequences occur. During the

32. *Cf.* Strite v. McGinnes, *supra* note 28. It would seem that the beneficiary should not be able to compel payments of corpus so long as the trustee does not abuse the discretion vested in him and, accordingly, the beneficiary does not have a general power of appointment.

33. These factors are in addition to the more obvious requisites not within the purview of this article. To avoid adverse income tax consequences to the donor, the donor may not retain certain reversionary interests in the trust income or corpus; the income or corpus may not be held for the donor's benefit; the power to revoke the trust or to dispose of the beneficial enjoyment of the trust property may not be held by the donor or a nonadverse party. INT. REV. CODE OF 1954, §§ 671-77. Adverse estate tax consequences to the donor follow from revocable transfers or transfers taking effect at death, made with retained life estates or in contemplation of death. INT. REV. CODE OF 1954, §§ 2035-38.

donor's lifetime, if the trustees of an irrevocable inter vivos trust are to be given discretionary powers to spray income and to distribute corpus among the trust beneficiaries, at least one half of the trustees must be independent trustees in order to avoid having the trust income taxed to the donor.[34] Following the donor's death, the discretionary powers to spray income and distribute corpus may be vested in a disinterested trustee or trustees without causing any adverse income or estate tax consequences to the beneficiaries or to the trustees. The maximum income and estate tax advantages flow from a trust where the trustee has discretion to spray the income among and to distribute corpus to the beneficiaries according to their respective needs. The use of an independent trustee for such a discretionary irrevocable inter vivos trust is essential if adverse tax consequences are to be avoided.

34. It is only for income tax consequences to the donor during the donor's lifetime that we are concerned with the independent trustee and the concept of the related or subordinate party.