

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Monday, April 5, 2021 9:47 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: control of a trust

Trust is its own UPE.

From: [REDACTED]
Sent: Sunday, April 4, 2021 6:41:12 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: control of a trust

Hello,

I would like to confirm my analysis of the ultimate parent entity of a trust.

Person A is the settlor of the trust. The trust is irrevocable. A has no reversionary interest in the corpus of the trust; A's wife and children are the beneficiaries. A and his wife each have the right to remove and replace trustees of the trust – it is a shared right. There are some limitations regarding trustees who may be designated – trustees may not be persons “related or subordinate” to A (relatives or employees).

I understand that a right to remove and replace trustees that is shared does not create “control” of a trust. See, e.g., Premerger Notification Practice Manual (5th Ed. 2015) (“PNPM”) #13 (“if the power to designate a replacement trustee is shared . . . no one person has a power to appoint 50 percent or more of the trustees and no one would be deemed to control the trust,”); Informal Interpretation #1106005 (“When the power to remove and replace 50% or more of the trustees is shared or subject to the consent of a third party, no one person has the power to appoint 50% or more of the trustees and no one person is deemed to control the trust.”). Further, I understand that spouses’ rights in removing and replacing trustees would not be aggregated in this circumstance, according to PNPM #5 (“the rights of spouses . . . are not aggregated in connection with determining who controls a trust . . .”).

Based on the above, it seems to me that the trust is not controlled by either A or his wife, and is its own ultimate parent entity.

With apologies for the rush, the matter is time sensitive so if you are able to advise whether you agree on Monday, that would be very much appreciated. Please let me know if there is any additional information you need to make your determination.

[REDACTED]





