

IRM PROCEDURAL UPDATE

DATE: 07/21/2020

NUMBER: wi-21-0720-0808

SUBJECT: BMF International Accounts Management

AFFECTED IRM(s)/SUBSECTION(s): 21.8.2

CHANGE(s):

IRM 21.8.2.19.2 Updated Form 3520 procedures to limit the penalties to the gross reportable amount per LB&I.

1. A U.S. person must file Form 3520 to report certain trust activities and transactions with foreign trusts such as:
 - The creation of a foreign trust by a U.S. person
 - A direct or indirect transfer of any money or property to a foreign trust by a U.S. person
 - The death of a U.S. person, if such person was treated as an owner of a foreign trust, and reporting any portion of a foreign trust that was included in the decedent's estate
 - A direct or indirect distribution from a foreign trust received by a U.S. person
 - A U.S. person, regardless of whether such a person has an interest in a foreign trust, must use the Form 3520 to report the receipt of certain large gifts or bequests from foreign persons
 - A U.S. person treated as an owner of a foreign trust, without regard to when the trust was created, or whether there were any transactions involving the foreign trust in the current year

EXCEPTION: Rev. Rul. 2013-14 provides that Fideicomiso or Mexican Land Trust arrangements, as described in this ruling, are not trusts within the meaning of § 301.7701-4(a). Meaning, a Mexican land trust arrangement that allows a U.S. citizen or entity to hold residential real property in some restricted areas of Mexico through an agreement with a Mexican bank isn't a trust under Treas. Reg. Section 301.7701-4(a) because the bank's only duties are to hold and transfer the property's legal title.

2. This form is required of any U.S. person who, directly or indirectly transfers property to a foreign trust, whether or not the trust has one or more U.S. beneficiaries. An Individual, Partnership, Corporation, Trust or Estate may be required to file this return.

NOTE: Form 3520 has four parts that relate to different requirements for filing Form 3520. See IRM 20.1.9, **International Penalties**, for more information. A separate Form 3520 must be filed for transactions with each foreign trust.

3. This form is also required of any U.S. person who received gifts from a non-resident alien or foreign estate greater than \$100,000 or from foreign corporations or partnerships greater than \$10,000 (adjusted for inflation) during the calendar year.
4. **Processing:** The Form 3520 is processed at the Ogden Submission Processing Campus (OSPC) under MFT 68, to the Business Master File (BMF):
 - o If the filer is an entity, the return is processed using the entity's EIN.
 - o If the filer is an individual, the return is processed using the individual's SSN followed by a "V" (if valid) or "W" (if invalid), the same way Forms 706 are processed.
5. **Report Plan Number (RPN):** This is a three-digit number shown on the tax module of Form 3520, MFT 68, on the first line of CC TXMOD in the **RPT** field. This number generates from Line 2b(1) (Employer Identification Number) and consists of the last three digits of that EIN. If line 2b(1) is blank or contains a number other than an EIN, a default of "520" is shown. This field was created to capture multiple Forms 3520 filed by the same US person who may have transactions and/or ownership of multiple foreign trusts.

EXAMPLE: TXMODA98-XXXX123 68 201812 RPT>123

6. **Due Date For Tax Years Ending Before 01-01-2017:** In general, for tax year ending before 2017, the due date for a U.S. person to file a Form 3520 is the same as the due date for income tax returns (1040 Series, 1041 Series, 1065 & 1120 Series), including extensions. Most taxpayers are required to file some type of income tax return and the Form 3520 is generally due on the date that the income tax return is due, including extensions. In the case of a Form 3520 filed with respect to a U.S. decedent, Form 3520 is due on the date that Form 706, "*United States Estate (and Generation-Skipping Transfer) Tax Return*", is due (including extensions), or would be due if the estate were required to file a return even if the executor of a decedent's estate made the special election under section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation act of 2010. Thus, the due date may vary. All required attachments must be submitted with Form 3520 for it to be considered a complete return.

NOTE: Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, cannot be used to request an extension on Form 3520. However, if the income tax return has an extended due date, the Form 3520 is due on the same extended due date.

7. **Due Date For Tax Years Ending After 12-31-2016:** In general, for tax years beginning after 2016, the due date for a U.S. person to file a Form 3520 is the

15th day of the 4th month following the end of the U.S. person's tax year. If the U.S. person lives outside of the United States and Puerto Rico the U.S. person's Form 3520 is due on the 15th day of the 6th month following the end of U.S. persons tax year. If a U.S. person is granted an extension of time to file an income tax return (1040 Series, 1041 Series, 1065 & 1120 Series), the due date for filing Form 3520 is the 15th day of the 10th month following the end of the U.S. person's tax year. In the case of a Form 3520 filed with respect to a U.S. decedent, for tax years beginning after 2016 Form 3520 is due the 15th day of the 4th month following the end of the decedent's last tax year. If the U.S. person's estate is also required to file a Form 3520, the estate will have to file by the 15th day of the 4th month following the end of the estate's tax year, just like any other U.S. person. All required attachments must be submitted with Form 3520 for it to be considered a complete return.

8. **Civil Penalties:** When a TRNS 223 generates, the Form 3520 is reviewed for potential civil penalties. If an assessment is made, penalties will be made on the U.S. filer's account (TIN listed on line 1b of the Form 3520), under MFT 13 if TIN is an EIN or MFT 55 if TIN is an SSN, with the appropriate civil penalty reference number (PRN), TC 240 and Blocking Series 52. When a penalty is assessed for Part I and/or Part III PRN 659 is used, for Part II PRN 677 is used. A CP 215 or CP 15 is generated to the taxpayer upon assessment of the civil penalty. If a penalty is assessed for Part I and Part III separate adjustments are input using the same PRN.
9. **Assessment of Penalties:** When the taxpayer fails to report or timely file the required information on Form 3520 # [REDACTED] # after the due date, including extensions, a campus notice TRNS 223 is generated to pull the Form 3520 from Files. The TRNS 223 notice is scanned to CIS and assigned. A scanned copy of Form 3520 (if located) is associated with the TRNS 223. AM will process TRNS 223 notices by reviewing the Form 3520 for potential civil penalties using procedures in the **IF AND THEN** table in Paragraph (10) below. If it is determined a penalty should be assessed use procedures in Paragraph (11) below.

EXCEPTION: If Streamlined Foreign Offshore or Streamline Domestic Offshore is written across the top of Form 3520 AND an Austin received date is present, research the taxpayers income tax return(s) (MFT 30) for a Transaction Code (TC) 971 with an Action Code (AC) 178. Do not assess a penalty if TC 971 with an AC 178 is found.

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NOTE: If Form 3520 is not available in CIS, research IDRS to determine if Form 3520 was filed timely and follow procedures below:

If	And	Then
Form 3520 was	Form 3520	Close the TRNS 223 "No Action"

received timely (i.e., TC 460 is found on MFT 68)	was received by the extended due date	
Form 3520 was received late (i.e., TC 460 is not found on MFT 68) "OR" Form 3520 was not received by the extended due date	The information in Paragraph (10) below is available on IDRS	Assess the penalty(ies) according to the instructions in Paragraph (11) below
Form 3520 was received late (i.e., TC 460 is not found on MFT 68) "OR" Form 3520 was not received by the extended due date	The information in Paragraph (10) below is not available on IDRS	Request the return from Files using CC ESTABD (notate in the remarks field "second request"). CAUTION: Only request the return if Files has had time to pull the return. See IRM 3.5.61.8.4.2(3), <i>CP 36 series notices, CP 170/CP 170A, CP 193/CP 193A, CP 223 and CP 293 (Duplicate Filing Conditions)</i> , for additional information on when Files pulls the return. If the return is charged out to another area attempt to contact the area to secure the return. If the return cannot be secured input another request as "Special Search" using Form 2275, <i>Records Request, Charge and Recharge</i> . If Files is unable to secure the return after the "Special Search" request, close the TRNS 223 "No Action". NOTE: If the return is secured follow the procedures in Paragraph (10) below.

10. Follow the table below to determine if a civil penalty should be assessed:

If	And	Then
A Correspondence Action Sheet is	Form 3520 was received timely (i.e., TC 460 is	Close the TRNS 223 No Action

attached to Form 3520	found on MFT 68) AND the Form 3520 was received by the extended due date	
A Correspondence Action Sheet is attached to Form 3520	Form 3520 was filed late (i.e., TC 460 is not found on MFT 68) OR the Form 3520 was not received by the extended due date	Assess a penalty according to the instructions in Paragraph (11) below
A Correspondence Action Sheet is not attached to Form 3520		Assess a penalty according to the instructions in Paragraph (11) below

NOTE: The manager of the employee processing a TRNS 223 must review any manual assessment of a penalty on a Form 3520 account resulting from the processing of a TRNS 223. Authorization for the assessment will be notated in CIS.

11. Use the information below to assess the initial penalty/penalties for late filed Form 3520. The penalty is based on the applicable box(es) the taxpayer checks on Form 3520, Page 1, "AND/OR" the information completed in Part I, Part II, and/or Part III.

NOTE: A Form 3520 penalty computation tool has been approved by LB&I and is available for AM employees to use when calculating these penalties.

- o If the first box is checked "AND/OR" Part I (Lines 5a through Line 18) has any completed information, assess a penalty (TC 240 PRN 659) equal to the "greater" of \$10,000 or 35% of the total amount reported on Page 2, Line 11b, the total of column (iv), and Line 13, the total of Column (i). If there is no amount on Lines 11b(iv) and 13(i), assess \$10,000. #

NOTE: The initial penalty for failure to file Form 3520 Part I generally is the "greater" of \$10,000 or 35% of the gross reportable amount. The gross reportable amount for Form 3520, Part I is the gross value of property involved in the creation of a foreign trust or the transfer of property to a foreign trust (including a transfer by reason of death) (Form 3520 Page 2, Lines 11b(iv) and 13(i)). The aggregate penalty assessed with respect to Form 3520 Part I cannot exceed the gross reportable amount (Form 3520, Page 2, Lines 11b(iv) and 13(i)).

CAUTION: If there is no amount listed on Lines 11b(iv) and 13(i) of the Form 3520, then assess the \$10,000 penalty. If the taxpayer later provides the information for Lines 11b(iv) and 13(i) abate the penalty,

if it should have been limited, using the procedures in Paragraph (12) below.

- For tax years ending after 12/31/2015 (do not assess a penalty on tax years ending earlier) if the second box is checked "AND/OR" Part II (Lines 20 through Line 23) has any completed information, assess a penalty (TC 240 PRN 677) equal to the "greater" of \$10,000 or 5% of the amount reported on Page 4, Line 23. If there is no amount on Line 23, assess \$10,000. # [REDACTED] #

NOTE: The initial penalty for failure to file Form 3520 Part II generally is the "greater" of \$10,000 or 5% of the gross reportable amount. The gross reportable amount for Form 3520, Part II is the gross value of the portion of the foreign trust's assets at the close of the year treated as owned by the U.S. owner (Form 3520 Page 4, line 23). The aggregate penalty assessed with respect to Form 3520 Part II cannot exceed the gross reportable amount (Form 3520, Page 4, Line 23).

CAUTION: If there is no amount listed on Line 23 of the Form 3520 and if a Foreign Grantor Trust Owner's Statement is attached to the Form 3520 and no amount on Line 9 of the Foreign Grantor Trust Owner's Statement, then assess the \$10,000 penalty. If the taxpayer later provides the information for Line 23 abate the penalty, if it should have been limited, using the procedures in Paragraph (12) below.

- If the third box is checked "AND/OR" Part III (Lines 24 through Line 27 and Lines 29 through Lines 53) has any completed information, assess a penalty (TC 240 PRN 659) equal to the "greater" of \$10,000 or 35% of the amount reported on Page 4, Line 27. If there is no amount on Line 27, assess \$10,000. # [REDACTED] #

NOTE: The initial penalty for failure to file Form 3520 Part III generally is the "greater" of \$10,000 or 35% of the gross reportable amount. The gross reportable amount for Form 3520, Part III is the gross amount of distributions received from a foreign trust (Form 3520 Page 4, line 27). The aggregate penalty assessed with respect to Form 3520 Part III cannot exceed the gross reportable amount (Form 3520, Page 4, Line 27).

CAUTION: If there is no amount listed on Line 27 of the Form 3520, then assess the \$10,000 penalty. If the taxpayer later provides the information for Line 27 abate the penalty, if it should have been limited, using the procedures in Paragraph (12) below.

- If the fourth box is checked "AND/OR" Part IV (Lines 54 through Line 56) has any completed information, assess a penalty (TC 240 PRN

668) of 5% for each month or part of a month the return is late (not to exceed 25%), of the amount of such foreign gift(s) (the total of Line 54 plus the total of Line 55 (g)). # [REDACTED] #

12. Abatement Procedures - Paper and phone abatement requests for both BMF and IMF modules are worked by the BMF International units.

- If the taxpayer can demonstrate the failure to comply was due to reasonable cause and not willful neglect, and the request contains a declaration made under the penalties of perjury, then abate the penalty. A taxpayer does not have reasonable cause merely because a foreign country imposes a civil or criminal penalty on the trustee (or other person) for disclosing the required information (§ 6677(d)). Also, refusal on the part of a foreign trustee to provide information for any other reason, including difficulty in producing the required information or provisions in the trust instrument that prevent the disclosure of required information, is not considered reasonable cause.

NOTE: Reasonable cause penalty abatements must be reviewed and approved by a manager prior to removing the penalty. After review, the workleader/manager will add a CIS case note documenting approval.

- Proof of an approved extension of time to file an income tax return must be considered if Form 3520 was filed within the approved extension period (Form 4868 or Form 7004). Check MFT 68 and/or the income tax module as applicable for timely filing or the presence of a posted or unposted TC 460. Abate penalty if extended due date shown is equal to or greater than the filing date.

REMINDER: This is not reasonable cause; therefore, the taxpayer's request does not have to contain a declaration made under the penalties of perjury nor reviewed and approved by a manager, remove the penalty with PRC 027.

- To abate, adjust the MFT 13 (BMF account numbers) or 55 (IMF account numbers) module with a 290 .00, Blocking Series 52, and the appropriate PRN with minus (-) after the abatement amount. As a result, transaction TC 241 generates on the Master File.

NOTE: Forward all requests for abatement of Examination assessed penalties, including Form 843 claims, to the area that assessed the penalty.

13. Non-Abatement Procedures:

- Advise taxpayer if research shows Form 3520 was filed late and give the specifics. Make sure the income tax return due date is checked to determine timely filing of the Form 3520.
- Allow the taxpayer to submit additional information for consideration of penalty abatement (i.e., copy of approved income tax return extension, certified mail receipt, reasonable cause statement).

- If additional information is not accepted, deny the request. Input 290 .00, with the appropriate PRN for .00, Blocking Series 98/99, and Reason Code 062. Advise the taxpayer of their penalty appeals rights using an IDRS Letter 854C.
- If a Form 843 claim is received and is being denied, follow normal penalty denial procedures.

IRM 21.8.2.19.3 Updated Form 3520-A procedures to limit the penalty to the gross reportable amount per LB&I.

1. A foreign trust must annually file a Form 3520-A, *Information Return of a Foreign Trust*, when a U.S. person is treated as an owner of any portion of the foreign trust. Form 3520-A includes a Foreign Grantor Trust Owner Statement and a Foreign Grantor Trust Beneficiary Statement on pages 3 through 5.
2. Form 3520-A is required for the foreign trust to satisfy the U.S. owner's annual obligation under IRC 6048(b). If there are multiple Foreign Grantor Trust Owners or U.S. Beneficiaries, there may be several Foreign Grantor Trust Owner Statements/ or Foreign Grantor Trust Beneficiary Statements that must be provided.
3. **Processing:** The Form 3520-A is processed at the Ogden Submission Processing Campus (OSPC) on the Business Master File (BMF) under MFT 42. Filing is done using the trust's EIN.
4. **Due Date:** This form is due the 15th day of the 3rd month (e.g., calendar year 2017 is due 3/15/18) following the end of the Trust's tax year or extended due date if the trust files for an extension (Form 7004).
5. **Civil Penalties:** When a Form 3520-A is filed after the return due date (postmarked after the 15th day of the 3rd month from the end of the trust's tax year), or when the taxpayer fails to report or timely file the required information, a campus notice TRNS 223 is generated to pull the return from Files. The TRNS 223 notice is sent to Accounts Management for penalty determination with the return attached if it is located in Files. A TRNS 223 requires the tax examiner to determine if a penalty must be manually calculated and assessed for the failure to file (FTF) Civil Penalty Reference Number (PRN) 660 using the **U.S. owner's** TIN listed on Line 6b, Page 3 of Form 3520-A under either MFT 13 (BMF, if EIN), or MFT 55 (IMF, if SSN) with TC 290 .00, Blocking Series 52, and PRN 660. The penalty assessment will post as a TC 240. The manager of an employee processing a TRNS 223 must review any manual assessment of a Form 3520-A penalty resulting from the processing of a TRNS 223 per § 6751(b)(1). Authorization for the assessment will be notated in CIS.
6. **Assessment of Penalties:** When the taxpayer fails to report or timely file the required information on Form 3520-A # [REDACTED] # after the due date, including extensions, a campus notice TRNS 223 is generated to pull the Form 3520-A from Files. The TRNS 223 notice is scanned to CIS and assigned. A scanned copy of Form 3520-A (if located) is associated with the TRNS 223. AM will process TRNS 223 notices by reviewing the Form 3520-A

for potential civil penalties using procedures in the "IF AND THEN" table in Paragraph (7) below.

EXCEPTION: If Streamlined Foreign Offshore or Streamline Domestic Offshore is written across the top of Form 3520-A AND an Austin received date is present, research the taxpayers income tax return(s) (MFT 30) for a Transaction Code (TC) 971 with an Action Code (AC) 178. Do not assess a penalty if TC 971 with an AC 178 is found.

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NOTE: If Form 3520-A is not available in CIS, research IDRS to determine if Form 3520-A was filed timely and follow procedures below:

If	And	Then
Form 3520-A was received timely (i.e., TC 460 is found on MFT 42)	Form 3520-A was received by the extended due date	Close the TRNS 223 "No Action"
Form 3520-A was received late (i.e., TC 460 is not found on MFT 42)"OR" Form 3520-A was not received by the extended due date		<p>Request the return from Files using CC ESTABD (notate in the remarks field "second request").</p> <p>CAUTION: Only request the return if Files has had time to pull the return. See IRM 3.5.61.8.4.2(3), CP 36 series notices, CP 170/CP 170A, CP 193/CP 193A,, CP 223 and CP 293 (Duplicate Filing Conditions), for additional information on when Files pulls the return.</p> <p>If the return is charged out to another area attempt to contact the area to secure the return. If the return cannot be secured input another request as "Special Search" using Form 2275, <i>Records Request, Charge and Recharge</i>. If Files is unable to secure the return after the "Special Search" request, close the TRNS 223 "No Action".</p> <p>NOTE: If the return is secured follow</p>

		the procedures in Paragraph (7) below.
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7. AM will follow the table below to determine if a civil penalty should be assessed. If it is determined a penalty should be assessed manually calculate and assess a penalty. The initial penalty for failure to file Form 3520-A generally is the **greater** of \$10,000 or 5% of the gross reportable amount. The gross reportable amount for Form 3520-A is the gross value of the portion of the foreign trust's assets at the close of the year treated as owned by each U.S. owner (Form 3520-A, Page 3 – Foreign Grantor Trust Owner Statement, line 9). The aggregate penalty assessed with respect to Form 3520-A cannot exceed the gross reportable amount (Form 3520-A, Page 3 - Foreign Grantor Trust Owner Statement, Line 9).

NOTE: If Form 3520-A has more than one Page 3 assess a penalty accordingly for each U.S. owner.

CAUTION: If Line 9 of the Form 3520-A - *Foreign Grantor Trust Owner Statement*, is blank then assess the \$10,000 penalty. If the taxpayer later provides the information for Line 9 abate the penalty, if it should have been limited, using the procedures in Paragraph (8) below. # [REDACTED]

If	And	Then
A Correspondence Action Sheet is attached to Form 3520-A	Form 3520-A was received timely (i.e., TC 460 is found on MFT 42)"AND" the Form 3520-A was received by the extended due date	Close the TRNS 223 "No Action"
A Correspondence Action Sheet is attached to Form 3520-A	Form 3520-A was filed late (i.e., TC 460 is not found on MFT 42)"OR" the Form 3520-A was not received by the extended due date	Assess a penalty NOTE: Do not assess a penalty if a substitute Form 3520-A was filed (identified by an Action Trail "D-3520" notated on the first page near the bottom left corner of the Form 3520-A) and there is proof the Form 3520 was filed timely (i.e., TC 460 is found on MFT 68)
A Correspondence Action Sheet is not attached to Form 3520-A		Assess a penalty NOTE: Do not assess a penalty if a substitute Form

		3520-A was filed (identified by an Action Trail "D-3520" notated on the first page near the bottom left corner of the Form 3520-A) and there is proof the Form 3520 was filed timely (i.e., TC 460 is found on MFT 68)
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EXCEPTION: If the foreign trust does not file Form 3520-A, but the U.S. owner completes and attaches a substitute Form 3520-A for the foreign trust to the U.S. owner's timely filed Form 3520 in accordance with the instructions for Form 3520, the U.S. owner will not be subject to the penalty for failure to file Form 3520-A.

8. Abatement Procedures - Paper and phone abatement requests for both BMF and IMF modules are worked by the BMF International units.
- o If the taxpayer can demonstrate the failure to comply was due to reasonable cause and not willful neglect, and the request contains a declaration made under the penalties of perjury, then abate the penalty.

REMINDER: Reasonable cause penalty abatements must be reviewed and approved by a manager prior to removing the penalty. After review, the workleader/manager will add a CIS case note documenting approval.

NOTE: A taxpayer does not have reasonable cause merely because a foreign country imposes a civil or criminal penalty on the trustee (or other person) for disclosing the required information (§ 6677(d)). Also, refusal on the part of a foreign trustee to provide information for any other reason, including difficulty in producing the required information or provisions in the trust instrument that prevent the disclosure of required information, is not considered reasonable cause.

- o Proof of an approved extension of time to file Form 3520-A must be considered if Form 3520-A was filed within the approved extension period (Form 7004). Check MFT 42 under the TIN of the Foreign Trust for the presence of a posted or unposted TC 460. Abate penalty if extended due date shown is equal to or greater than the filing date.

REMINDER: This is not reasonable cause; therefore, the taxpayer's request does not have to contain a declaration made under the penalties of perjury nor reviewed and approved by a manager, remove the penalty with PRC 027.

- o If it is a substitute Form 3520-A, proof of an approved extension (Form 4868 or 7004) of time to file the Form 3520 (which the substitute Form

3520-A was attached) must be considered if Form 3520 was filed within the approved extension period.

REMINDER: This is not reasonable cause; therefore, the taxpayer's request does not have to contain a declaration made under the penalties of perjury nor reviewed and approved by a manager, remove the penalty with PRC 027.

- To abate, adjust the MFT 13 (BMF account numbers) or 55 (IMF account numbers) module with a 290 .00 Blocking Series 52, and PRN 660 with a minus (–) after the abatement amount. As a result, transaction TC 241 generates on the Master File.

NOTE: Forward all requests for abatement of Examination assessed penalties, including Form 843 claims, to the area that assessed the penalty.

9. Non-Abatement Procedures:

- Advise taxpayer if research shows Form 3520-A was filed late and give the specifics.
- Allow the taxpayer to submit additional information for consideration of penalty abatement (i.e., copy of approved extension, certified mail receipt, reasonable cause statement).
- If additional information is not accepted, deny the request. Input 290 .00, PRN 660 for .00, Blocking Series 98/99, and Reason Code 062. Advise the taxpayer of their penalty appeals rights using IDRS Letter 854C.
- If a Form 843 claim is received and is being denied, follow normal penalty denial procedures.