



IRS Nationwide Tax Forum | 2023

Foreign Gift and Trust Reporting on Forms 3520 and 3520-A

Objectives

Today our presentation will:

- Describe who must file Part IV of Form 3520 to report having received large foreign gifts or bequests
- Identify common errors in filing Form 3520
- Describe who must file Form 3520 and/or Form 3520-A to report transactions with/ownership of foreign trusts
- Identify common errors in filing Form 3520-A

Objectives (cont'd)

Today our presentation will:

- Describe Revenue Procedure 2020-17 exemptions for certain tax-favored foreign trusts from IRC 6048 reporting

IRC 6039F

IRC 6039F, Notice of large gifts or bequests received from foreign persons

- Requires information reporting about large foreign gifts or bequests received by U.S. persons
- Reporting is done on Form 3520, Part IV, Large Gifts or Bequests from Foreign Persons to U.S. Persons

IRC 6039F (cont'd)

- Form 3520 is filed separately from U.S. person's income tax return with the Ogden Campus
- Imposes a penalty for failure to file foreign gift or bequest information

Form 3520 – Part IV

Who Must File?

A U.S. person who received any amount that the person treated as a gift, inheritance or bequest received from a foreign person (foreign gift or bequest) is required to complete and file Part IV of Form 3520 if the gift, inheritance or bequest is over certain reporting thresholds:

- Gifts or bequests from foreign individuals or foreign estates are reportable by a U.S. person if the aggregate value is greater than \$100,000, and/or

Form 3520 – Part IV

Who Must File? (cont'd)

- Gifts from a foreign corporation or foreign partnership are reportable by a U.S. person if the foreign gift is greater than:

Year	Amount*
2020	\$16,649
2021	\$16,815
2022	\$17,339
2023	\$18,567

*This figure is adjusted annually for inflation

Form 3520 Filing Due Date

Due Date for U.S. person filing Form 3520:

	Due Date	Filer Living Outside of the U.S. and Puerto Rico Due Date	U.S. Decedent Due Date	Extended Due Date
Before Tax Year 2017	Same as filer's income tax return due date	Same as filer's income tax return due date	Same as Form 706, United States Estate Tax Return	Same as filer's extended income tax return due date
Tax Years 2017 and Later	15 th day of 4 th month following the end of the filer's tax year	15 th day of 6 th month following the end of the filer's tax year	15 th day of the 4 th month following the end of the decedent's last tax year	<u>15th day of 10th month</u> following the end of the filer's tax year

Form 3520 – Part IV Penalties

IRC 6039F Concerning large foreign gifts (Part IV)

- If a U.S. person fails to furnish the required information by the due date:
 - 5% of the value of the gift for each month in which the gift is not reported (not to exceed 25%), and
 - the tax consequences of the receipt of the “gift” are determined by the Secretary (IRC 6039F(c)(1)(A))
- Reasonable cause could apply as a defense to the penalty

Notice 2022-36

Notice 2022-36, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, was issued August 24, 2022

- Notice provides “...relief for certain taxpayers from certain failure to file penalties and certain international information return (IIR) penalties with respect to tax returns for taxable years 2019 and 2020 that are filed on or before September 30, 2022.”

Notice 2022-36 (cont'd)

- Notice provides relief for campus assessed Form 3520 and Form 3520-A penalties for the above mentioned years only
- Notice does not provide relief from exam assessed Form 3520 and Form 3520-A penalties

Common Errors in Filing Form 3520

Common Errors Include:

- Foreign gift (including bequests/inheritances) reporting by Non-U.S. Persons
- Reporting gifts that do not meet the reporting thresholds
- Protective filings
- Extension checkbox

Common Errors in Filing Form 3520 Part IV

Only U.S. persons are required to report foreign gifts (including bequests/inheritances) under IRC 6039F

- A U.S. person as defined under IRC 7701(a)(30) includes:
 - A citizen or resident of the U.S.
 - A domestic partnership
 - A domestic corporation
 - Any estate (other than a foreign estate within the meaning of IRC 7701(a)(31))

Common Errors in Filing Form 3520 Part IV (cont'd)

- A domestic trust (as defined in IRC 7701(a)(30)(E) and regulations)
- An individual who is a dual resident taxpayer within the meaning of Treasury Regulation 301.7701(b)-7(a) and claims a treaty benefit as a nonresident of the United States pursuant to an income tax treaty
- A “protective” filing of the Form 3520 is viewed as a required filing and if filed late the filer will receive a penalty

Common Errors in Filing Form 3520 Part IV (cont'd)

- The \$100,000 threshold for reporting a foreign gift (including bequests/inheritances) from a foreign individual or foreign estate includes gifts from a foreign related-party (such as a foreign individual or foreign estate)
- If the gifting parties are not related, aggregation of the gift amounts are not required

Common Errors in Filing Form 3520

Parts I-IV

Check Form 3520, Box 1k if you are relying on an income tax return extension to extend the filing of Form 3520 and add the tax form number of the tax return that will be filed

1a Name of U.S. person(s) with respect to whom this Form 3520 is being filed (see instructions)			b Taxpayer identification number (TIN)	
c Number, street, and room or suite no. If a P.O. box, see instructions.			d Spouse's TIN	
e City or town	f State or province	g ZIP or foreign postal code	h Country	
i Check the box if you are married and filing a joint 2020 income tax return, and you are filing a joint Form 3520 with your spouse . . . <input type="checkbox"/>				
j If an automatic 2-month extension applies for the U.S. person's tax return, check this box and attach statement. See instructions . . . <input type="checkbox"/>				
k If an extension was requested for the tax return, check this box <input type="checkbox"/> and enter the form number of the tax return to be filed. ▶				

- If you received a penalty notice because you missed checking box 1k but did file an extension for the income tax return, call for abatement of the penalty (267) 941-1000

IRC 6048

- IRC 6048, Information with Respect to Certain Foreign Trusts
 - Requires information reporting about foreign trusts with U.S. owners and transfers to and distributions from foreign trusts by U.S. persons
 - Reporting is done on a Form 3520 and Form 3520-A

IRC 6677

- IRC 6677, Failure to File Information with Respect to Certain Foreign Trusts
 - Provides penalties for failing to comply with IRC 6048

Form 3520 Foreign Trust Reporting

- U.S. person must file a separate Form 3520 for each foreign trust if there are transactions with multiple trusts
- **Three** Parts of Form 3520 **for foreign trusts**:
 - Part I: Transfers of Money or Property to a Foreign Trust by a U.S. Person
 - Part II: Ownership of Foreign Trust by a U.S. Person under IRC 671 – 679

Form 3520 Foreign Trust Reporting (cont'd)

- Part III: Trust Distributions to, or Use of Foreign Trust Property by, a U.S. Person

Form 3520 – Part I Who Must File?

- **Part I**
 - U.S. person who creates a foreign trust
 - U.S. person who transfers money or property (either directly or indirectly) to a foreign trust, including by reason of death
 - U.S. person that transfers (or transferred) money or property (either directly or indirectly) to a related foreign trust in exchange for an obligation of the foreign trust or a person related to the foreign trust (ex. loan to a foreign trust)

Form 3520 – Part II

Who Must File? (cont'd)

- **Part II**
 - The executor of an estate of a U.S. citizen or U.S. resident decedent if at the time of death:
 - The U.S. citizen or resident decedent was treated as the owner of any portion of the foreign trust, or
 - Any portion of the foreign trust was included in the gross estate of the decedent

Form 3520 – Part II

Who Must File?

- **Part II**
 - U.S. person treated as the owner of a foreign trust under the grantor trust rules (IRC 671-679)
 - Include a substitute Form 3520-A as an attachment to the Form 3520 if the foreign trust fails to file Form 3520-A

Form 3520 – Part III

Who Must File?

- **Part III**
 - Any U.S. person who receives a distribution (either directly or indirectly) from a foreign trust, has an outstanding loan from a foreign trust, or receives the uncompensated use of the foreign trust assets

Form 3520 Additional Filing Requirements

- Filed separately from U.S. person's income tax return with the Ogden Campus
- U.S. person to file a separate Form 3520 for each relevant foreign trust
- U.S. persons with a married filing jointly filing status may file a joint Form 3520 (for each relevant foreign trust) if they are both the transferors, grantors, or beneficiaries of the same trust as relevant for purposes of the section of the Form 3520 being completed

Form 3520-A

- Annual Information Return of a Foreign Trust with a U.S. Owner
 - Requirement of IRC 6048(b)
- Form 3520-A provides information regarding:
 - The Foreign Trust
 - The U.S. beneficiaries, and
 - Any U.S. person who is treated as an owner of any portion of the foreign trust

Form 3520-A (cont'd)

- The U.S. Owner is responsible for ensuring that the foreign trust timely files the return annually and furnishes certain information to U.S. owners and U.S. beneficiaries

Form 3520-A Who Must File?

- The Trustee of the foreign trust files Form 3520-A if it has a U.S. Owner (under the grantor trust rules) during any portion of the trust year and furnishes the required annual statements to its U.S. owners and U.S. beneficiaries

Form 3520-A

Who Must File? (cont'd)

- If Trustee does not file Form 3520-A and furnish such information, the U.S. Owner must complete a Form 3520-A to the best of their ability and attach it as a substitute Form 3520-A to the U.S. Owner's Form 3520 by the Form 3520 due date
 - The U.S. Owner, rather than the foreign trust, is liable for penalties under IRC 6677(b) if Form 3520-A (or a substitute Form 3520-A) is not timely filed, inaccurate, or incomplete

Form 3520-A Filing Requirements

- Due on the 15th day of the 3rd month after the end of the trust's tax year. Due date may be extended by six months using Form 7004
- Includes the Balance Sheet and Income Statement for the trust and statements for each beneficiary and owner
 - Owner should always receive a statement
 - Beneficiary will receive a statement if they received a distribution during the tax year

Form 3520-A Filing Requirements (cont'd)

- Filed separately from U.S. income tax return with the Ogden Campus
- Form 7004 to request extension of time to file, the trust must have a Taxpayer Identification Number (TIN) to file an extension

Common Errors in Filing Form 3520-A

- For Form 3520-A, use the Taxpayer Identification Number (TIN) of the foreign trust not the Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) of the foreign trust owner.
 - Use Form 7004 for an extension of time to file with trust TIN.
 - If the foreign trust does not have a TIN, you may apply for one online at [IRS.gov/EIN](https://www.irs.gov/ein). Foreign trusts may also apply for a TIN by calling (267) 941-1099 (toll call).

Common Errors in Filing Form 3520-A (cont'd)

- If filing a substitute Form 3520-A, file it attached to the Form 3520. Do not send in a second copy of the substitute Form 3520-A unattached to the Form 3520

Revenue Procedure 2020-17

- 26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also: Part I, IRC 6048 and 6677)
- Provides an exemption from the foreign trust information reporting requirements under IRC 6048 for certain eligible U.S. citizens and resident individuals' (U.S. individuals) transactions with, and ownership of, certain tax-favored foreign retirement trusts and certain tax-favored foreign nonretirement savings trusts

Revenue Procedure 2020-17 (cont'd)

- Establishes procedures for eligible individuals to request abatement of IRC 6677 penalties that have been assessed, or a refund of penalties that have been paid, for the U.S. individuals' failure to comply with IRC 6048 with respect to an applicable tax-favored foreign trust
- Does not provide an exemption from other information reporting requirements, such as under IRC 6038D and FBAR filing requirements

Rev. Proc. 2020-17: Eligible Individuals

For purposes of this revenue procedure, an **eligible individual** means an individual who:

- Is, or at any time was, a U.S. citizen or resident (within the meaning of IRC 7701(a)(30)(A)), and
- For any period during which an amount of tax may be assessed under IRC 6501 (without regard to IRC 6501(c)(8)), is compliant (or comes into compliance) with all requirements for filing a U.S. federal income tax return (or returns) covering the period such individual was a U.S. citizen or resident, and

Rev. Proc. 2020-17: Eligible Individuals (cont'd)

- To the extent required under U.S. tax law, has reported as income any contributions to, earnings of, or distributions from, an applicable tax-favored foreign trust on the applicable return (including on an amended return)

Rev. Proc. 2020-17: Tax-Favored Foreign Retirement Trust

A foreign trust for U.S. tax purposes that operates exclusively or almost exclusively to provide, or to earn income for the provision of, pension or retirement benefits and that meets the following requirements established by the laws of the foreign jurisdiction:

- Exempt from income tax or is otherwise tax-favored in the trust's jurisdiction
- Annual information reporting is provided or available in the trust's jurisdiction

Rev. Proc. 2020-17: Tax-Favored Foreign Retirement Trust (cont'd)

- Only contributions with respect to income earned from the performance of personal services are permitted
- Contributions to the trust are limited by a percentage of earned income of the participant, are subject to an annual limit of \$50,000 or less to the trust, or are subject to a lifetime limit of \$1,000,000 or less to the trust

Rev. Proc. 2020-17: Tax-Favored Foreign Retirement Trust (cont'd)

- Withdrawals, distributions, or payments from the trust are conditioned upon reaching a specified retirement age, disability, or death, or penalties are applicable
- Employer-maintained trusts must be non-discriminatory and provide significant benefits for a substantial majority of eligible employees

What is Not a Tax-Favored Foreign Retirement Trust Under Rev. Proc. 2020-17

- Trusts where the domestic law of the foreign country allows contributions over the limits set in Rev. Proc. 2020-17 even if the eligible individual does not exceed the contribution limits
- Trusts that allow the eligible individual to make contributions to the trust that are not with respect to income earned for the performance of personal services

What is Not a Tax-Favored Foreign Retirement Trust Under Rev. Proc. 2020-17 (cont'd)

- Trusts that have acquired assets or funds through rollovers from trusts established in a different country or jurisdiction than the one where the trust is established
- Any other trust not meeting the requirements of Rev. Proc. 2020-17 Section 5.03

Rev. Proc. 2020-17: Tax-Favored Foreign Non-Retirement Trust

A foreign trust for U.S. tax purposes that operates exclusively or almost exclusively to provide, or to earn income for the provision of, medical, disability, or educational benefits, and that meets the following requirements established by the laws of the foreign jurisdiction:

- Exempt from income tax or is otherwise tax-favored in the trust's jurisdiction
- Annual information reporting is provided or available in the trust's jurisdiction

Rev. Proc. 2020-17: Tax-Favored Foreign Non-Retirement Trust (cont'd)

- Contributions limited to \$10,000 annually or \$200,000 on a lifetime basis
- Withdrawals, distributions, or payments from the trust conditioned upon the provision of medical, disability, or educational benefits, or penalties are applicable

What is Not a Tax-Favored Foreign Non-Retirement Trust Under Rev. Proc. 2020-17

- Trusts that are merely savings accounts not for the provision of medical, disability, or educational benefits
- Trusts that allow contributions over the limits set in Rev. Proc. 2020-17 even if the eligible individual does not exceed the contribution limits
- Any other trust not meeting the requirements of Rev. Proc. 2020-17 Section 5.04

Key Points

- A U.S. person who received any amount and treated such amount as a foreign gift, inheritance or bequest is required to file Form 3520 if the gift or bequest value is over certain reporting thresholds
- Be aware of common Form 3520 filing errors including filing by non-U.S. persons, filing thresholds, protective filings, and failing to check the Form 3520 checkbox if an income tax return extension was filed

Key Points (cont'd)

- Be aware of common Form 3520-A filing errors including the need for a trust TIN in order to file an extension, Form 7004. If filing a substitute Form 3520-A attach it to Form 3520, do not mail in a separate copy of the substitute Form 3520-A unattached to Form 3520
- Revenue Procedure 2020-17 provides certain exemptions for certain tax favored foreign trusts from IRC 6048 reporting on Forms 3520 and Forms 3520-A

Acronyms

Acronyms	Explanation
EIN	Employer Identification Number
IIR	International Information Return
IRC	Internal Revenue Code
ITIN	International Taxpayer Identification Number
TIN	Taxpayer Identification Number
SSN	Social Security Number

Forms 3520 and 3520-A Resources

- Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and its instructions
- Form 3520-A, Annual Return of Foreign Trusts With a U.S. Owner, and its instructions
- Notice 2022-36
- Revenue Procedure 2020-17

Forms 3520 and 3520-A Resources (cont'd)

- Reminder to U.S. Owners of a Foreign Trust
- Failure to File the Form 3520/3520-A – Penalties Practice Unit at <https://www.irs.gov/businesses/corporations/practice-units>