

# Instructions for Form 3520

## Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts

Section references are to the Internal Revenue Code unless otherwise noted.

### A Change To Note

Due to the repeal of the excise tax provision under sections 1491 through 1494, lines 14 and 20 through 24 of the 1997 form are no longer needed. Because of the short time span between the release of the 1997 and 1998 forms and the need to limit the amount of reprogramming required, we have retained the 1997 numbering. Lines 14 and 20 through 24 will remain on the 1998 form followed by the word "Reserved."

### General Instructions

#### Purpose of Form

U.S. persons file Form 3520 to report:

- Certain transactions with foreign trusts, and
- Receipt of certain large gifts or bequests from certain foreign persons.

A separate Form 3520 must be filed for transactions with **each** foreign trust.

#### Who Must File

##### File Form 3520 if:

1. You are the **responsible party** for reporting a **reportable event** that occurred during the current tax year, or you held an outstanding obligation of a related foreign trust (or a person related to the trust) that you treated as a **qualified obligation** during the current tax year. **Responsible party, reportable event, and qualified obligation** are defined on pages 2 and 3.

Complete the first part of page 1 and the relevant portions of Part I. See the instructions for Part I.

2. You are a U.S. person who, during the current tax year, is treated as the owner of any part of the assets of a foreign trust under the grantor trust rules.

Complete the first part of page 1 and Part II. See the instructions for Part II.

3. You are a U.S. person who, during the current tax year, received a distribution from a foreign trust, or a related foreign trust held an outstanding obligation issued by you (or a person related to you) that you treated as a **qualified obligation** (defined on page 2) during the current tax year.

Complete the first part of page 1 and Part III. See the instructions for Part III.

4. You are a U.S. person who, during the current tax year, received either:

a. More than \$100,000 from a nonresident alien individual or a foreign estate (including foreign persons related to that nonresident alien individual or foreign estate) that you treated as gifts or bequests, or

b. More than \$10,557 from foreign corporations or foreign partnerships (including foreign persons related to such foreign corporations or foreign partnerships) that you treated as gifts.

Complete the first part of page 1 and Part IV. See the instructions for Part IV.

**Note:** You may also be required to file **Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts**.

**Exceptions to filing Form 3520:** Form 3520 does not have to be filed to report the following transactions:

- Transfers to foreign trusts described in sections 402(b), 404(a)(4), or 404A.
- Fair market value (FMV) transfers by a U.S. person to a foreign nongrantor trust (other than transfers that are treated as FMV transfers by reason of the receipt of a qualified obligation).
- Transfers to foreign trusts that have a current determination letter from the IRS recognizing their status as exempt from income taxation under section 501(c)(3).
- Transfers to, distributions from, and ownership of Canadian Registered Retirement Savings Plans if the trust would qualify for treaty benefits under the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital. However, if for any taxable year you rely on the tax treaty with Canada to avoid information reporting, you are required to disclose this position pursuant to section 6114. See **Pub. 901, U.S. Tax Treaties**.
- Distributions from foreign trusts that are taxable as compensation for services rendered (within the meaning of section 672(f)(2)(B) and its regulations), so long as the recipient reports the distribution as compensation income on its applicable Federal income tax return.
- Distributions from foreign trusts to domestic trusts that have a current determination letter from the IRS recognizing their status as exempt from income taxation under section 501(c)(3).

#### When and Where To File

In general, Form 3520 is due on the date that your income tax return is due, including extensions. Attach the form to your income tax return. In addition, send a copy to the Internal Revenue Service Center, Philadelphia, PA 19255.

Form 3520 must have all required attachments to be considered complete.

#### Joint Returns

Two transferors or grantors of the same foreign trust, or two U.S. beneficiaries of the same foreign trust, may file a joint Form 3520, but only if they file a joint income tax return.

## Inconsistent Treatment of Items

The U.S. beneficiary and U.S. owner's tax return must be consistent with the **Form 3520-A**, Annual Information Return of a Foreign Trust With a U.S. Owner, filed by the foreign trust unless you report the inconsistency to the IRS. If you are treating items on your tax return differently from the way the foreign trust treated them on its return, file **Form 8082**, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR). Get Form 8082 for more details.

## Definitions

A **distribution** is any gratuitous transfer of money or other property from a trust, whether or not the trust is treated as owned by another person under the grantor trust rules, and without regard to whether the recipient is designated as a beneficiary by the terms of the trust. A distribution includes the receipt of trust corpus and the receipt of a gift or bequest described in section 663(a).

A distribution also includes constructive transfers from a trust. For example, if charges you make on a credit card are paid by a foreign trust or guaranteed or secured by the assets of a foreign trust, the amount charged will be treated as a distribution to you by the foreign trust. Similarly, if you write checks on a foreign trust's bank account, the amount will be treated as a distribution.

Also, if you receive a payment from a foreign trust in exchange for property transferred to the trust or services rendered to the trust, and the fair market value (FMV) of the payment received exceeds the FMV of the property transferred or services rendered, the excess will be treated as a distribution to you.

For example:

- If you sell stock with a FMV of \$100 to a foreign trust and receive \$150 in exchange, you have received a distribution of \$50.
- Similarly, if you receive \$100 from the trust for services performed by you for the trust, and the services have a FMV of \$20, you have received a distribution of \$80.

See the instructions for Part I, Schedule A, and Part III, for special rules with respect to obligations made to, or received from, a foreign trust.

A **foreign trust** is any trust other than a domestic trust. A domestic trust is any trust if:

1. A court within the United States is able to exercise primary supervision over the administration of the trust, and
2. One or more U.S. persons have the authority to control all substantial decisions of the trust.

A **grantor** is any person who creates a trust or transfers cash or other property to a trust. A grantor includes any person treated as the owner of any part of a foreign trust's assets under sections 671 through 679, excluding section 678.

A **grantor trust** is any trust to the extent that the assets of the trust are treated as owned by a person other than the trust. See the **grantor trust rules** below. A part of the trust may be treated as a grantor trust to the extent that only a portion of the trust assets are owned by a person other than the trust.

The **grantor trust rules** are contained in subpart E of Part I of subchapter J (sections 671 through 679).

A **gratuitous transfer** to a foreign trust is any transfer to the trust other than **(a)** a transfer for FMV, or **(b)** a corporate or partnership distribution. A transfer of property to a trust may be considered a gratuitous transfer without regard to whether the transfer is a gift for gift tax purposes (see Chapter 12 of Subtitle B of the Code).

For purposes of this determination, if a U.S. person contributed property to a trust in exchange for any type of interest in the trust, such interest in the trust will be disregarded in determining whether FMV has been received. In addition, a U.S. person will not be treated as making a transfer for FMV merely because the transferor is deemed to recognize gain on the transaction.

If you transfer property to a foreign trust in exchange for an obligation of the trust (or a person related to the trust), it will be a gratuitous transfer unless the obligation is a **qualified obligation** (defined below).

**Gross reportable amount** 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);
- The gross value of any portion of a foreign trust treated as owned by a U.S. person under the grantor trust rules or any part of a foreign trust that is included in the gross estate of a U.S. citizen or resident;
- The gross value of assets deemed transferred at the time a domestic trust to which a U.S. citizen or resident previously transferred property becomes a foreign trust, provided such U.S. citizen or resident is alive at the time the trust becomes a foreign trust (see section 679(a)(5)); or
- The gross amount of distributions received from a foreign trust.

**Gross value** is the FMV of property as determined under section 2031 and its regulations as if the owner had died on the valuation date. Although formal appraisals are not generally required, you should keep contemporaneous records of how you arrived at your good faith estimate.

A **guarantee**:

- Includes any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another's obligation;
- Encompasses any form of credit support, and includes a commitment to make a capital contribution to the debtor or otherwise maintains its financial viability; or
- Includes an arrangement reflected in a "comfort letter," regardless of whether the arrangement gives rise to a legally enforceable obligation. If an arrangement is contingent upon the occurrence of an event, in determining whether the arrangement is a guarantee, you must assume that the event has occurred.

A **nongrantor trust** is any trust to the extent that the assets of the trust are not treated as owned by a person other than the trust. Thus, a nongrantor trust is treated as a taxable entity. A trust may be treated as a nongrantor trust with respect to only a portion of the trust assets. See the grantor trust rules.

An **owner** of a foreign trust is the person that is treated as owning any of the assets of a foreign trust pursuant to the grantor trust rules.

A **qualified obligation**, for purposes of this form, is any obligation if:

1. The obligation is reduced to writing by an express written agreement,

2. The term of the obligation does not exceed 5 years (including options to renew and rollovers) and it is repaid within the 5-year term,

3. All payments on the obligation are denominated in U.S. dollars,

4. The yield to maturity of the obligation is not less than 100% of the applicable Federal rate under section 1274(d) for the day on which the obligation is issued and not greater than 130% of the applicable Federal rate,

5. The U.S. person agrees to extend the period for assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding, to a date not earlier than 3 years after the maturity date of the obligation, unless the maturity date of the obligation does not extend beyond the end of the U.S. person's taxable year and is paid within such period (this is done on Part I, Schedule A, and Part III, as applicable), and

6. The U.S. person reports the status of the note, including principal and interest payments, on Part I, Schedule A, and Part III, as applicable, for every year that the loan is outstanding.

A **related person** generally includes any person who is related to you for purposes of sections 267 and 707(b). This includes, but is not limited to:

- A member of your family – your brothers and sisters, half-brothers and half-sisters, spouse ancestors (parents, grandparents, etc.), lineal descendants (children, grandchildren, etc.), and the spouses of any of these persons.
- A corporation in which you, directly or indirectly, own more than 50% in value of the outstanding stock. See section 643(i)(2)(B). In addition, see the regulations pursuant to sections 267 and 707(b) for further guidance on related parties.

A **related foreign trust**. A person is related to a foreign trust if such person, without regard to the transfer at issue, is a grantor of the trust, a beneficiary of the trust, or is related to any grantor or beneficiary of the trust. See definition of a **related person** above.

A **reportable event** includes:

1. The creation of a foreign trust by a U.S. person.
2. The transfer of any money or property, directly or indirectly, to a foreign trust by a U.S. person, including a transfer by reason of death if the transfer was a **gratuitous transfer** (defined on page 2).
3. The death of a citizen or resident of the United States if:
  - a. The decedent was treated as the owner of any portion of a foreign trust under the grantor trust rules, or
  - b. Any portion of a foreign trust was included in the gross estate of the decedent.
4. A trust that was not a foreign trust becomes a foreign trust.

**Responsible party** means:

- The transferor in the case of a **reportable event** (defined above).
- The executor of the decedent's estate in any other case.

A **transfer** includes both direct and indirect transfers to a foreign trust. A transaction is considered a transfer without regard to whether the transferor receives consideration from the trust or whether the transfer constitutes a sale or exchange of the property to the trust.

The **transferor** is any person who:

1. Creates or settles a foreign trust,
2. Directly or indirectly transfers money or property to a foreign trust,
3. Makes a sale to a foreign trust if the sale was at other than arm's-length terms or was to a related foreign trust, or makes (or guarantees) a loan to a related foreign trust,
4. Is the executor of the estate of a U.S. person, and
  - a. The decedent made a testamentary transfer (a transfer by reason of death) to a foreign trust,
  - b. Immediately prior to death, the decedent was treated as the owner of any portion of a foreign trust under the grantor trust rules, or
  - c. Any portion of a foreign trust's assets were included in the estate of the decedent.
5. In the case of a trust described in item 4 of the definition of **reportable event**:
  - a. If an individual who is a citizen or resident of the United States transferred property to the trust when it was not a foreign trust, and that individual is alive when the trust becomes a foreign trust, that individual is the transferor (see section 679(a)(5)).
  - b. In all other events, the trust is the transferor.

Generally, the person defined as the transferor is the **responsible party** (defined above) who must ensure that required information be provided or pay appropriate penalties.

A **U.S. agent** is a **U.S. person** (defined on page 4) that has a binding contract with a foreign trust that allows the U.S. person to act as the trust's authorized U.S. agent in applying sections 7602, 7603, and 7604 with respect to:

- Any request by the Service to examine records or produce testimony related to the proper U.S. tax treatment of amounts distributed by, or required to be taken into account under the grantor trust rules with respect to, a foreign trust, or
- Any summons by the Service for such records or testimony.

A U.S. grantor, a U.S. beneficiary, or a domestic corporation controlled by the grantor or beneficiary may act as a U.S. agent. However, you may not treat the foreign trust as having a U.S. agent unless you enter the name, address, and taxpayer identification number of the U.S. agent on lines 3a through 3g. If the person identified as the U.S. agent does not produce records or testimony when requested or summonsed by the IRS, the IRS may redetermine the tax consequences of your transactions with the trust and impose appropriate penalties under section 6677.

The agency relationship must be established by the time the U.S. person files Form 3520 for the relevant taxable year and must continue as long as the statute of limitations remains open for the relevant taxable year. If the agent resigns, liquidates, or its responsibility as an agent of the trust is terminated, see Notice 97-34, 1997-1 C.B. 422.

A **U.S. beneficiary** includes any person that could possibly benefit (directly or indirectly) from the trust (including an amended trust) at any time, whether or not the person is named in the trust instrument as a beneficiary and whether or not the person can receive a distribution from the trust in the current year. In addition, a U.S. beneficiary includes:

- A foreign corporation that is a controlled foreign corporation (as defined in section 957(a)),
- A foreign partnership if a U.S. person is a partner of the partnership, and
- A foreign estate or trust if the estate or trust has a U.S. beneficiary.

A foreign trust will be treated as having a U.S. beneficiary unless the terms of the trust instrument specifically prohibit any distribution of income or corpus to a U.S. person at any time, even after the death of the U.S. transferor, and the trust cannot be amended or revised to allow such a distribution.

A **U.S. person** is:

- A citizen or resident alien of the United States (see **Pub. 519**, U.S. Tax Guide for Aliens, for guidance on determining resident alien status),
- A domestic partnership,
- A domestic corporation,
- Any estate (other than a foreign estate, within the meaning of section 7701(a)(31)), and
- Any trust if it is not a **foreign trust** (defined on page 2).

## Penalties

A penalty generally applies if Form 3520 is not timely filed or if the information is incomplete or incorrect. Generally, the penalty is:

1. 35% of the gross value of any property transferred to a foreign trust for failure by a U.S. transferor to report the transfer,
2. 35% of the gross value of the distributions received from a foreign trust for failure by a U.S. person to report receipt of the distribution, or
3. 5% of the amount of certain foreign gifts for each month for which the failure to report continues (not to exceed a total of 25%). See section 6039F(c).

In addition, if a foreign trust has a U.S. owner and the trust fails to file the required annual reports on trust activities and income, the U.S. owner is subject to a penalty equal to 5% of the gross value of the portion of the trust's assets treated as owned by the U.S. person (the gross reportable amount). See Form 3520-A.

Additional penalties may be imposed if noncompliance continues after the IRS mails a notice of failure to comply with required reporting. However, this penalty may not exceed the gross reportable amount. Also, penalties will only be imposed to the extent that the transaction is not reported. Thus, if a U.S. person transfers property worth \$1 million to a foreign trust, but only reports \$400,000 of that amount, penalties could only be imposed on the unreported \$600,000.

For more information, see section 6677.

**Reasonable cause.** No penalties will be imposed if the taxpayer can demonstrate that the failure to comply was due to reasonable cause and not willful neglect.

**Note:** *The fact that a foreign country would impose penalties for disclosing the required information is not reasonable cause. Similarly, reluctance on the part of a foreign fiduciary or provisions in the trust instrument that prevent the disclosure of required information, is not reasonable cause.*

## Who Must Sign

If the return is filed by an individual or a fiduciary, it must be signed by that individual or fiduciary. If it is filed by a

partnership, it must be signed by a general partner or limited liability company member. If it is filed by a corporation, it must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other corporate officer (such as a tax officer) who is authorized to sign. The paid preparer must complete the required preparer information and:

- Sign the return, by hand, in the space provided for the preparer's signature (signature stamps are not acceptable).
- Give a copy of the return to the filer.

## Identification Numbers and Addresses

Use social security numbers or individual taxpayer identification numbers to identify individuals. Use employer identification numbers to identify estates, trusts, partnerships, and corporations.

Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the U.S. person has a P.O. box, show the box number instead of the street address.

**Foreign address.** Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code, if any. Please do not abbreviate the country name.

## Specific Instructions

See **Who Must File** for which parts of the form to complete. All filers must check any applicable box for initial, final, or amended return.

**Initial return.** If this is the first return you are filing with respect to the foreign trust identified, check the box for Initial return.

**Final return.** If you do not have to file any further returns for transactions with the foreign trust, check the box for Final return. For example, if you annually filed Part II, Form 3520 because you were the owner of the trust for U.S. income tax purposes and the trust has terminated within the taxable year, that year's return would be a final return with respect to that foreign trust.

**Amended return.** If this Form 3520 is filed to amend a Form 3520 that you filed previously, check the box for Amended return.

**Line 1.** This line identifies the U.S. person that is filing the Form 3520. If you and your spouse are both making transfers to the same trust and you file joint returns, you may file only one Form 3520. Put the names and taxpayer identification numbers in the same order as they appear on your Form 1040.

**Line 3.** If you know that the foreign trust has appointed a U.S. agent for purposes of section 6048(b), answer "Yes" and complete lines 3a through 3g. See definition of **U.S. agent** on page 3.

**Line 4.** If you are the executor of the estate of a U.S. citizen or resident, you must identify the decedent on this line.

## Part I Transfers by U.S. Persons to a Foreign Trust During the Current Tax Year

Complete Part I for information on a **reportable event** (defined on page 3).

**Line 5.** If you are not the trust creator, enter the name of the person that created or originally settled the foreign trust.

**Line 6.** See the list of country codes on pages 10 and 11 of these instructions. If the country is not included in the list, write in "OC" for "other country" and write out the country name.

**Lines 7, 8, and 10.** If you are reporting multiple transfers to a single foreign trust and the answers to lines 7, 8, or 10 are different for various transfers, complete a separate line for each transfer on duplicate copies of the relevant pages of the form.

**Line 7a.** If "Yes," you must comply with the reporting requirements that would apply to a direct transfer to that other person. For example, if that other person is a foreign partnership, you must comply with the reporting requirements for transfers to foreign partnerships.

**Line 8.** If the transfer was a completed gift (see Regulations section 25.2511), or bequest, you may have to file **Form 706**, United States Estate (and Generation-Skipping Transfer) Tax Return, or **Form 709**, United States Gift (and Generation-Skipping Transfer) Tax Return.

**Line 9.** See definition of **U.S. beneficiary** on page 3.

**Line 10.** If you are treated as the owner of any portion of the foreign trust under the grantor trust rules, answer "Yes" to this question.

## Schedule A Obligations of a Related Trust

**Line 11a.** The FMV of an obligation of the trust (or person related to the trust) that you receive in exchange for the transferred property equals zero, unless the obligation meets the requirements of a qualified obligation. See pages 2 and 3 for definitions of **qualified obligation** and **related foreign trust**.

**Lines 12 and 32.** If you answered "Yes" to line 11b (line 31, column (e)) with respect to any obligation, you generally must answer "Yes" to line 12 (line 32). By so doing, you agree to extend the period of assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding. This form will be deemed to be consented to and signed by the Service Center Director or the Assistant Commissioner (International) for purposes of Regulations section 301.6501(c)-1(d).

If you answer "No" to line 12 (line 32), you generally may not treat an obligation as a qualified obligation on line 11b (line 31, column (e)). The one exception to this is if the maturity date of the obligation does not extend beyond the end of your taxable year for which you are reporting and such obligation is paid within that taxable year.

## Schedule B Gratuitous Transfers

Complete the applicable portions of Schedule B with respect to all **reportable events** (as defined on page 3) that took place during the current tax year.

**Note:** *If a reportable event causes you to be treated as the owner of any portion of the foreign trust under the grantor trust rules, you must also complete Part II of this form.*

### Line 13.

- In your description, indicate whether the property is tangible or intangible.
- You may aggregate transfers of cash during the year on a single line of line 13.
- If there is not enough space on the form, please attach a statement.
- If any transfers are reported on attachments, you must enter "Attachment" on one of the lines in column (b), and enter the total amount of transfers reported on the attachment on line 13, columns (c), (d), (e), (f), (h), and (i).

**Note:** *Failure to report amounts that should be reported here, may cause penalties to be imposed. See item 1 of Penalties on page 4.*

**Line 13, column (e).** Only include gain that is immediately recognized at the time of the transfer.

**Note:** *With respect to any transfer by a U.S. person to a foreign nongrantor trust after August 4, 1997, the transfer is treated as a sale or exchange and the transferor must recognize as a gain the excess of the FMV of the transferred property over its adjusted basis. Although the gain is not reported on Form 3520, it is to be reported on the appropriate form or schedule of the transferor's income tax return. See section 684.*

**Line 13, column (f).** Generally, if the reported transaction is a sale, you should report the gain on the appropriate form or schedule of your income tax return.

**Line 16.** Enter the name, address, whether the person is a **U.S. beneficiary** (defined on page 3), and taxpayer identification number, if any, of all specified beneficiaries. Include specified beneficiaries, classes of discretionary beneficiaries, and names or classes of any beneficiaries that could be named as additional beneficiaries. If there is not enough space on the form, please attach a statement.

**Line 18.** Enter the name, address, and taxpayer identification number (if any) of any persons other than those listed on line 17, if those persons have significant powers over the trust (e.g., "protectors," "enforcers," any person that must approve of trustee decisions or otherwise direct the trustee, any person with a power of appointment, any person with a power to remove or appoint trustees, etc.). Include a description of each person's power. If there is not enough space, please attach a statement.

**Line 19.** Attach:

- A summary of the terms of the trust that includes a summary of any oral agreements or understandings you have with the trustee, whether or not legally enforceable.
- A copy of all trust documents (and any revisions), including the trust instrument, any memoranda of wishes prepared by the trustees summarizing the settlor's wishes, any letter of wishes prepared by the settlor summarizing his or her wishes, and any similar documents.

If you checked "No," also attach a copy of the trust's financial statements, including a balance sheet and an income statement similar to those shown in Form 3520-A. These financial statements must reasonably reflect the trust's accumulated income under U.S. income tax principles. For example, the statements must not treat capital gains as additions to trust corpus.

## Schedule E Qualified Obligations Outstanding in the Current Tax Year

**Line 25.** Provide information on the status of any outstanding obligation of the foreign trust (or a person related to the foreign trust) that you reported as a qualified obligation in the current tax year. This information is required in order to retain the obligation's status as a qualified obligation. If relevant, attach a statement describing any changes to the terms of the qualified obligation.

If the obligation fails to retain the status of a qualified obligation, you will be treated as having made a gratuitous transfer to the foreign trust, which must be reported on Schedule B, Part I. See Notice 97-34.

## Part II U.S. Owner of a Foreign Trust

Complete Part II if you are considered the owner of any assets of a foreign trust under the grantor trust rules during the taxable year. You are required to enter a taxpayer identification number for such a foreign trust on line 2b.

**Line 26.** Enter information regarding any person other than yourself who is considered the owner of any portion of the trust under the grantor trust rules. Also, enter in column (e) the specific Code section that causes that person to be considered an owner for U.S. income tax purposes. See the grantor trust rules under sections 671 through 679.

**Line 27.** See the list of country codes on pages 10 and 11 of these instructions. If the country is not included in the list, write in "OC" for "other country" and write out the country name.

**Line 28.** If "Yes," the copy of the Foreign Grantor Trust Owner Statement (page 3, Form 3520-A) should show the amount of the foreign trust's income that is attributable to you for U.S. income tax purposes. See Section IV of Notice 97-34.

If "No," you may be liable for a penalty of 5% of the trust assets that you are treated as owning, plus additional penalties for continuing failure to file after notice by the Secretary. See section 6677.

**Line 29.** Your gross reportable amount is the FMV of the trust assets that you are treated as owning. Include all assets at FMV as of the end of the taxable year. For this purpose, disregard all liabilities. The trust should send you this information in connection with its Form 3520-A. If you did not receive such information (line 9 of the Foreign Grantor Trust Owner Statement) from the trust, complete line 29 to the best of your ability. At a minimum, include the value of all assets that you have transferred to the trust. Also use Form 8082 to notify the IRS that you did not receive a Foreign Grantor Trust Owner Statement. However, filing Form 8082 does not relieve you of any penalties that may be imposed under section 6677. See **Penalties** on page 4.

## Part III Distributions To a U.S. Person From a Foreign Trust During the Current Tax Year

If you received an amount from a portion of a foreign trust of which you are treated as the owner and you have correctly reported any information required on Part II and the trust has filed a Form 3520-A with the IRS, do not separately disclose distributions again in Part III. If you received an amount from a foreign trust that would require a report under both Parts III and IV (gifts and bequests) of Form 3520, report the amount only in Part III.

**Line 30.** Report any cash or property that you received (actually or constructively, directly or indirectly) during the current tax year, from a foreign trust, whether or not taxable, unless the amount is a loan to you from the trust that is to be reported on line 31. For example, if you are a partner in a foreign partnership that receives a distribution from a foreign trust, you must report your allocable share of such payment as an indirect distribution from the trust.

**Line 31.** If you, or a person related to you, received a loan from a related foreign trust, it will be treated as a distribution to you unless the obligation you issued in exchange is a qualified obligation.

For this purpose, a loan to you by an unrelated third party that is guaranteed by a foreign trust is generally treated as a loan from the trust.

**Line 31, column (e).** Answer "Yes" if your obligation given in exchange for the loan is a **qualified obligation** (defined on page 2).

**Line 32.** See instructions for lines 12 and 32 on page 5.

**Line 33.** Failure to report distributions that should be reported here, may cause penalties to be imposed.

See item 2 of **Penalties** on page 4.

**Line 34.** Provide information on the status of any outstanding obligation to the foreign trust that you reported as a qualified obligation in the current tax year. This information is required in order to retain the obligation's status as a qualified obligation. If relevant, attach a statement describing any changes to the terms of the qualified obligation. If the obligation fails to retain the status of a qualified obligation, you will be treated as having received a distribution from the foreign trust, which must be reported in Part III. See Notice 97-34.

**Lines 35 and 36.** If any of the six items required for the Foreign Grantor Trust Beneficiary Statement or for the Foreign Nongrantor Trust Beneficiary Statement (see page 7) is missing, you must check "No" to line 35 or line 36, as applicable.

Also, if you answer "Yes" to line 35 or line 36, and the foreign trust or U.S. agent does not produce records or testimony when requested or summonsed by the IRS, the IRS may redetermine the tax consequences of your transactions with the trust and impose appropriate penalties under section 6677.

**Line 35.** If "Yes," attach the Foreign Grantor Trust Beneficiary Statement from the foreign trust and do not complete the remainder of Part III with respect to the distribution. If a U.S. beneficiary receives a complete Foreign Grantor Trust Beneficiary Statement with respect to a distribution during the tax year, the beneficiary should treat the distribution for income tax purposes as if it came directly from the owner. For example, if the distribution is

a gift, the beneficiary should not include the distribution in gross income.

This statement must contain these items:

1. The first and last day of the taxable year of the foreign trust to which this statement applies.

2. An explanation of the facts necessary to establish that the foreign trust should be treated for U.S. tax purposes as owned by another person. (The explanation should identify which Code section treats the trust as owned by another person.)

3. A statement identifying whether the owner of the trust is an individual, corporation, or partnership.

4. A description of property (including cash) distributed or deemed distributed to the U.S. person during the taxable year, and the FMV of the property distributed.

5. A statement that the trust will permit either the IRS or the U.S. beneficiary to inspect and copy the trust's permanent books of account, records, and such other documents that are necessary to establish that the trust should be treated for U.S. tax purposes as owned by another person. This statement is not necessary if the trust has appointed a U.S. agent.

6. A statement as to whether the foreign trust has appointed a **U.S. agent** (as defined on page 3). If the trust has a U.S. agent, include the name, address, and taxpayer identification number of the agent.

**Line 36.** If "Yes," attach the Foreign Nongrantor Trust Beneficiary Statement from the foreign trust. A Foreign Nongrantor Trust Beneficiary Statement must include the following items:

1. An explanation of the appropriate U.S. tax treatment of any distribution or deemed distribution for U.S. tax purposes, or sufficient information to enable the U.S. beneficiary to establish the appropriate treatment of any distribution or deemed distribution for U.S. tax purposes.

2. A statement identifying whether the owner of the trust is a partnership or a foreign corporation.

3. A statement that the trust will permit either the IRS or the U.S. beneficiary to inspect and copy the trust's permanent books of account, records, and such other documents that are necessary to establish the appropriate treatment of any distribution or deemed distribution for U.S. tax purposes. This statement is not necessary if the trust has appointed a U.S. agent.

4. The Foreign Nongrantor Trust Beneficiary Statement must also include items 1, 4, and 6, as listed for line 35 on page 6.

## Schedule A Default Calculation of Trust Distributions

If you answered "Yes" to line 36, you may complete either Schedule A or Schedule B. Generally, however, if you complete Schedule A in the current year (or did so in the prior year), you must continue to do so for all future years, even if you are able to answer "Yes" to line 36 in that future year. (The only exception to this consistency rule is that you may use Schedule B in the year that a trust terminates, but only if you are able to answer "Yes" to line 36 in the year of termination.)

**Line 38.** To the best of your knowledge, state the number of years the trust has been in existence as a nongrantor trust and attach an explanation of your basis for this statement. Consider any portion of a year to be a

complete year. If this is the first year that the trust has been a nongrantor trust, skip lines 39 through 41 and enter the amount from line 37 on line 42.

**Line 39.** Enter the total amount of distributions that you received during the 3 preceding tax years (or the number of years the trust has been a nongrantor trust, if less than 3). For example, if a trust distributed \$50 in year 1, \$120 in year 2, and \$150 in year 3, the amount reported on line 39 would be \$320 (\$50 + \$120 + \$150).

**Line 41.** Divide line 40 by 3 (or the number of years the trust has been a nongrantor trust if less than 3). Consider any portion of a year to be a complete year. For example, a nongrantor trust created on July 1, 1997, would be treated on a 1999 calendar year return as having two preceding years (1997 and 1998). In this case, you would calculate the amount on line 41 by dividing line 40 by 2. Do not disregard tax years in which no distributions were made. The IRS will consider your proof of these prior distributions as adequate records to demonstrate that any distribution up to the amount on line 37 is not an accumulation distribution in the current taxable year.

**Line 42.** Enter this amount as ordinary income on your tax return. Report this amount on the appropriate schedule of your tax return (e.g., Schedule E (Form 1040), Part III).

**Note:** *If there is an amount on line 43, you must also complete line 44 and Schedule C to determine the amount of any interest charge you may owe.*

## Schedule B Actual Calculation of Trust Distributions

You may only use Schedule B if:

- You answered "Yes" to line 36,
- You attach a copy of the Foreign Nongrantor Trust Beneficiary Statement to this return,
- You have never before used Schedule A for this foreign trust or this foreign trust terminated during the taxable year.

**Line 46.** Enter the amount received by you from the foreign trust that is treated as ordinary income of the trust in the current tax year. Ordinary income is all income that is not capital gains.

**Line 50.** Enter any other distributed amount that is not included in lines 46, 47, 48, and 49.

**Line 51.** Enter the foreign trust's aggregate undistributed net income (UNI). For example, assume that a trust was created in 1992 and has made no distributions prior to 1998. Assume the trust's ordinary income was \$0 in 1997, \$60 in 1996, \$124 in 1995, \$87 in 1994, \$54 in 1993, and \$25 in 1992. Thus, for 1998, the trust's UNI would be \$350. If the trust earned \$100 and distributed \$200 during 1998 (so that \$100 was distributed from accumulated earnings), the trust's 1999 aggregate UNI would be \$250 (i.e., \$350 + \$100 - \$200).

**Line 52.** Enter the foreign trust's weighted undistributed net income (weighted UNI). The trust's weighted UNI is its accumulated income that has not been distributed, weighted by the years that it has accumulated income. To calculate weighted UNI, multiply the undistributed income from each of the trust's years by the number of years since that year, and then add each year's result. Using the example from line 51, the trust's weighted UNI in 1998 would be \$1,260, calculated as follows:

Year	No. of years since that year	UNI from each year	Weighted UNI
1997	1	\$ 0	\$ 0
1996	2	60	120
1995	3	124	372
1994	4	87	348
1993	5	54	270
1992	6	25	150
TOTAL		\$350	\$1,260

To calculate the trust's weighted UNI in 1999, the trust could repeat this calculation, or the weighted UNI shown on line 52 of the 1998 Form 3520 could simply be updated using the following formula:

- Begin with 1998 weighted UNI,
- Add UNI at the beginning of 1998,
- Add trust earnings in 1998,
- Subtract trust distributions in 1998, and
- Subtract weighted trust accumulated distributions in 1998. (Weighted trust accumulation distributions are the trust accumulation distributions in 1998 multiplied by the applicable number of years from 1998.)

Using the examples on page 7, the trust's 1999 weighted UNI would be \$1,150, calculated as follows.

1998 weighted UNI .....	\$1,260
UNI at beginning of 1998.....	+ 350
Trust earnings in 1998.....	+ 100
Trust distributions in 1998 .....	- 200
Weighted trust accumulation distributions in 1998 (\$100 X 3.6).....	- 360
1999 weighted UNI .....	\$1,150

**Line 53.** Calculate the trust's applicable number of years by dividing line 52 by line 51. Using the examples in the instructions for lines 51 and 52, the trust's applicable number of years would be 3.6 in 1998 (1,260/350) and 4.6 in 1999 (1,150/250).

**Note:** Include as many decimal places as there are digits in the UNI on line 51 (e.g., using the example in the instructions to line 51, include three decimal places).

## Schedule C Calculation of Interest Charge

Complete Schedule C if you entered an amount on line 43 or line 47.

**Line 55.** Enter the amount from line 54 of this form on line 1, Form 4970. Then compute the tax on the total accumulation distribution using lines 1 through 28 of Form 4970. Enter on line 55 the tax from line 28 of Form 4970.

**Note:** Use Form 4970 as a worksheet and attach it to Form 3520.

**Line 57.** Interest accumulates on the tax (line 55) for the period beginning on the date that is the applicable number of years (as rounded on line 56) prior to the applicable date and ending on the applicable date. For purposes of making this interest calculation, the applicable date is the date that is mid-year through the taxable year for which reporting is made (e.g., in the case of a 1998 calendar-year taxpayer, the applicable date would be June 30, 1998). Alternatively, if you received only a single distribution during the taxable year that is treated as an accumulation distribution, you may use the date of that distribution as the applicable date.

For portions of the interest accumulation period that are prior to 1996 (and after 1976), interest accumulates at a simple rate of 6% annually, without compounding. For portions of the interest accumulation period that are after 1995, interest is compounded daily at the rate imposed on underpayment of tax under section 6621(a)(2). This compounded interest for periods after 1995 is imposed not only on the partial tax, but also on the total simple interest attributable to pre-1996 periods.

If you are a 1998 calendar-year taxpayer and you use June 30, 1998, as the applicable date for calculating interest, use Table B below to determine the combined interest rate and enter it on line 57. If you are not a 1998 calendar-year taxpayer or you choose to use the actual date of the distribution as the applicable date, calculate the combined interest rate using the above principles and enter it on line 57.

**Table B  
Combined Interest Rate Imposed on the  
Total Accumulation Distribution**

Look up the applicable number of years of the foreign trust that you entered on line 56. Read across to find the combined interest rate to enter on line 57. Use this table only if you are a 1998 calendar year taxpayer and are using June 30, 1998 as the applicable date.

Applicable number of years of trust (from line 56)	Combined interest rate (enter on line 57)
1.0.....	0.0875
1.5.....	0.1354
2.0.....	0.1854
2.5.....	0.2376
3.0.....	0.4083
3.5.....	0.4506
4.0.....	0.4928
4.5.....	0.5351
5.0.....	0.5773
5.5.....	0.6196
6.0.....	0.6618
6.5.....	0.7041
7.0.....	0.7463
7.5.....	0.7886
8.0.....	0.8308
8.5.....	0.8731
9.0.....	0.9153
9.5.....	0.9576
10.0.....	0.9998
10.5.....	1.0421
11.0.....	1.0843
11.5.....	1.1266
12.0.....	1.1688
12.5.....	1.2111
13.0.....	1.2533
13.5.....	1.2956
14.0.....	1.3378
14.5.....	1.3801
15.0.....	1.4223
15.5.....	1.4646
16.0.....	1.5068
16.5.....	1.5491
17.0.....	1.5913
17.5.....	1.6336
18.0.....	1.6758
18.5.....	1.7181
19.0.....	1.7603
19.5.....	1.8026
20.0.....	1.8448
20.5.....	1.8871
21.0.....	1.9293
All years greater than 21.0.....	1.9716

**(Note:** Interest charges began in 1977.)

**Line 59.** Report this amount as additional tax (ADT), on the appropriate line of your income tax return (e.g., for Form 1040 filers, include this amount on line 56 of your



1998 Form 1040). Write "ADT" to the left of the line 56 entry space.

## Part IV U.S. Recipients of Gifts or Bequests Received During the Current Tax Year From Foreign Persons

**Note:** Failure to report gifts that should be reported, may cause penalties to be imposed. See item 3 of **Penalties** on page 4.

A gift to a U.S. person does not include any amount paid for qualified tuition or medical payments made on behalf of the U.S. person.

If a foreign trust makes a distribution to a U.S. beneficiary, the beneficiary is to report the amount as a distribution in Part III, rather than as a gift in Part IV.

Contributions of property by foreign persons to domestic or foreign trusts that have U.S. persons as beneficiaries are not reportable by those beneficiaries unless they are treated as receiving the contribution in the year of the transfer (e.g., the beneficiary is an owner of that portion of the trust under section 678).

A domestic trust that is not treated as owned by another person is required to report the receipt of a gift or bequest from a foreign person under Part IV.

A domestic trust that is treated as owned by a foreign person is not required to report the receipt of a contribution to the trust from a foreign person. However, a U.S. person should report the receipt of a distribution from such a trust as a gift from a foreign person under Part IV.

**Line 60.** To calculate the threshold amount (\$100,000), you must aggregate gifts from different foreign nonresident aliens and foreign estates if you know (or have reason to know) that those persons are related to each other or one is acting as the nominee for the other. For example, if you receive a gift of \$75,000 from nonresident alien individual A and a gift of \$40,000 from nonresident alien individual B, and you know that A and B are related, you must answer "Yes" and complete columns (a) through (c) for each gift.

**Line 61.** Answer "Yes" if: you received aggregate amounts in excess of \$10,557 during the current tax year, that you treated as gifts from foreign corporations or foreign partnerships (or any persons that you know (or

have reason to know) are related to such foreign corporations or foreign partnerships).

For example, if you, a calendar-year taxpayer during 1998, received \$5,000 from foreign corporation X that you treated as a gift, and \$8,000 that you received from nonresident alien A that you treated as a gift, and you know that X is wholly owned by A, you must complete columns (a) through (g) for each gift.

**Note:** Gifts from foreign corporations or foreign partnerships are subject to recharacterization by the IRS under section 672(f)(4).

**Line 62.** If "Yes," and the ultimate donor on whose behalf the reporting donor is acting is a foreign corporation or foreign partnership, attach an explanation including the ultimate foreign donor's name, address, identification number (if any), and status as a corporation or partnership.

If the ultimate donor is a foreign trust, treat the amount received as a distribution from a foreign trust and complete Part III.

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**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form and related schedules will vary depending on individual circumstances. The estimated average times are:

<b>Recordkeeping</b> .....	50 hr., 28 min.
<b>Learning about the law or the form</b> .....	4 hr., 44 min.
<b>Preparing the form</b> .....	6 hr., 42 min.
<b>Sending the form to the IRS</b> .....	16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

## Country Codes

Enter on lines 6a, 6b, and line 27, columns (a) and (b) the codes from the list below.

Country	Code	
Afghanistan	AF	Egypt
Albania	AL	El Salvador
Algeria	AG	Equatorial Guinea
American Samoa	AQ	Eritrea
Andorra	AN	Estonia
Angola	AO	Ethiopia
Anguilla	AV	Europa Island
Antarctica	AY	Falkland Islands (Islas Malvinas)
Antigua and Barbuda	AC	Faroe Islands
Argentina	AR	Fiji
Armenia	AM	Finland
Aruba	AA	France
Ashmore and Cartier Islands	AT	French Guiana
Australia	AS	French Polynesia
Austria	AU	French Southern and Antarctic Lands
Azerbaijan	AJ	Gabon
Azores	PO	Gambia, The
Bahamas, The	BF	Gaza Strip
Bahrain	BA	Georgia
Baker Island	FQ	Germany
Bangladesh	BG	Ghana
Barbados	BB	Gibraltar
Bassas da India	BS	Glorioso Islands
Belarus	BO	Greece
Belgium	BE	Greenland
Belize	BH	Grenada
Benin	BN	Guadeloupe
Bermuda	BD	Guam
Bhutan	BT	Guatemala
Bolivia	BL	Guernsey
Bosnia-Herzegovina	BK	Guinea
Botswana	BC	Guinea-Bissau
Bouvet Island	BV	Guyana
Brazil	BR	Haiti
British Indian Ocean Territory	IO	Heard Island and McDonald Islands
Brunei	BX	Honduras
Bulgaria	BU	Hong Kong
Burkina Faso	UV	Howland Island
Burma	BM	Hungary
Burundi	BY	Iceland
Cambodia	CB	India
Cameroon	CM	Indonesia
Canada	CA	Iran
Canary Islands	SP	Iraq
Cape Verde	CV	Ireland
Cayman Islands	CJ	Isle of Man
Central African Republic	CT	Israel
Chad	CD	Italy
Chile	CI	Jamaica
China, People's Republic of	CH	Jan Mayen
Christmas Island (Indian Ocean)	KT	Japan
Clipperton Island	IP	Jersey
Cocos (Keeling) Islands	CK	Johnston Atoll
Colombia	CO	Jordan
Comoros	CN	Juan de Nova Island
Congo	CF	Kazakhstan
Cook Islands	CW	Kenya
Coral Sea Islands Territory	CR	Kingman Reef
Corsica	VP	Kiribati
Costa Rica	CS	Korea, Democratic People's Republic of (North)
Cote D'Ivoire (Ivory Coast)	IV	Korea, Republic of (South)
Croatia	HR	Kuwait
Cuba	CU	Kyrgyzstan
Cyprus	CY	Laos
Czech Republic	EZ	Latvia
Denmark	DA	Lebanon
Djibouti	DJ	Lesotho
Dominica	DO	Liberia
Dominican Republic	DR	Libya
Ecuador	EC	Liechtenstein
		Lithuania
		Luxembourg
		Macau
		Macedonia
		EG
		ES
		EK
		ER
		EN
		ET
		EU
		FK
		FO
		FJ
		FI
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		LA
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		LI
		LY
		LS
		LH
		LU
		MC
		ML
		MK

Madagascar.....	MA	San Marino.....	SM
Malawi.....	MI	Sao Tome and Principe.....	TP
Malaysia.....	MY	Saudi Arabia.....	SA
Maldives.....	MV	Senegal.....	SG
Mali.....	ML	Serbia.....	SR
Malta.....	MT	Seychelles.....	SE
Marshall Islands.....	RM	Sierra Leone.....	SL
Martinique.....	MB	Singapore.....	SN
Mauritania.....	MR	Slovakia.....	LO
Mauritius.....	MP	Slovenia.....	SI
Mayotte.....	MF	Solomon Islands.....	BP
Mexico.....	MX	Somalia.....	SO
Micronesia, Federated States of.....	FM	South Africa.....	SF
Midway Islands.....	MQ	South Georgia and the South Sandwich Islands.....	SX
Moldova.....	MD	Spain.....	SP
Monaco.....	MN	Spratlly Islands.....	PG
Mongolia.....	MG	Sri Lanka.....	CE
Montenegro.....	MW	Sudan.....	SU
Montserrat.....	MH	Suriname.....	NS
Morocco.....	MO	Svalbard.....	SV
Mozambique.....	MZ	Swaziland.....	WZ
Namibia.....	WA	Sweden.....	SW
Nauru.....	NR	Switzerland.....	SZ
Navassa Island.....	BQ	Syria.....	SY
Nepal.....	NP	Taiwan.....	TW
Netherlands, The.....	NL	Tajikistan.....	TI
Netherlands Antilles.....	NT	Tanzania, United Republic of.....	TZ
New Caledonia.....	NC	Thailand.....	TH
New Zealand.....	NZ	Togo.....	TO
Nicaragua.....	NU	Tokelau.....	TL
Niger.....	NG	Tonga.....	TN
Nigeria.....	NI	Trinidad and Tobago.....	TD
Niue.....	NE	Tromelin Island.....	TE
Norfolk Island.....	NF	Tunisia.....	TS
Northern Ireland.....	UK	Turkey.....	TU
Northern Mariana Islands.....	CQ	Turkmenistan.....	TX
Norway.....	NO	Turks and Caicos Islands.....	TK
Oman.....	MU	Tuvalu.....	TV
Pakistan.....	PK	Uganda.....	UG
Palau, Republic of.....	PS	Ukraine.....	UP
Palmyra Atoll.....	LQ	United Arab Emirates.....	TC
Panama.....	PM	United Kingdom.....	UK
Papua New Guinea.....	PP	United States of America.....	US
Paracel Islands.....	PF	Uruguay.....	UY
Paraguay.....	PA	Uzbekistan.....	UZ
Peru.....	PE	Vanuatu.....	NH
Philippines.....	RP	Vatican City.....	VT
Pitcairn Island.....	PC	Venezuela.....	VE
Poland.....	PL	Vietnam.....	VM
Portugal.....	PO	Virgin Islands (British).....	VI
Puerto Rico.....	RQ	Virgin Islands (U.S.).....	VQ
Qatar.....	QA	Wake Island.....	WQ
Reunion.....	RE	Wallis and Futuna.....	WF
Romania.....	RO	West Bank.....	WE
Russia.....	RS	Western Sahara.....	WI
Rwanda.....	RW	Western Samoa.....	WS
St. Kitts and Nevis.....	SC	Yemen.....	YM
St. Helena.....	SH	Zaire.....	CG
St. Lucia.....	ST	Zambia.....	ZA
St. Pierre and Miquelon.....	SB	Zimbabwe.....	ZI
St. Vincent and the Grenadines.....	VC	Other Countries.....	OC