Instructions for Form 3520-A

Annual Information Return of Foreign Trust
With a U.S. Owner

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

General Instructions

Purpose of Form
Form 3520-A is the annual information return of a foreign trust with at least one U.S. owner. The form provides information about the foreign trust, its U.S. beneficiaries, and any U.S. person who is treated as an owner of any portion of the foreign trust.

Who Must File
A foreign trust must file Form 3520-A to satisfy its annual information reporting requirements under section 6048(b). Each U.S. person treated as an owner of any portion of a foreign trust under sections 671 through 679 is responsible for ensuring that the foreign trust files Form 3520-A and furnishes the required annual statements to its U.S. owners and U.S. beneficiaries.

When and Where To File
File a complete Form 3520-A (including pages 3 and 4) with the Internal Revenue Service Center, Philadelphia, PA 19255, by the 15th day of the 3rd month after the end of the trust’s tax year. Give copies of the Foreign Grantor Trust Owner Statement and the Foreign Grantor Trust Beneficiary Statement to the U.S. owners and U.S. beneficiaries by the 15th day of the 3rd month after the end of the trust’s tax year.

An extension of time to file Form 3520-A (including the statements) may be granted. For details, get Form 2708, Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns.

Who Must Sign
If the return is filed by:

- An individual or fiduciary, it must be signed and dated by that individual or fiduciary.
- A partnership, it must be signed and dated by a general partner or limited liability company member.
- A corporation, it must be signed and dated by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other corporate officer (such as a tax officer) authorized to sign.
- A limited liability company, it must be signed and dated by a general partner or limited liability company member.
- A court within the United States is able to exercise primary jurisdiction over the administration of the trust and, if a court is designated under section 677(a), the court may be granted. For details, get Form 2708, Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns.

Give a copy of the return to the filer.

Penalties
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 at the close of that year if the foreign trust: (a) fails to file a timely Form 3520-A, or (b) does not furnish the information required by section 6048(b). See section 6677(a). Additional penalties may be imposed if noncompliance continues after the IRS mails a notice of failure to comply with required reporting. See section 6677(a).

Criminal penalties may be imposed under sections 7203, 7206, and 7207 for failure to file on time and for filing a false or fraudulent return.

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.

Definitions

Distribution
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.

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

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 an unrelated third party with a 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 at the close of that year if the foreign trust:

- fails to file a timely Form 3520-A, or
- does not furnish the information required by section 6048(b).

Additional penalties may be imposed if noncompliance continues after the IRS mails a notice of failure to comply with required reporting. See section 6677(a).

Note: If a partnership or corporation makes a gratuitous transfer to a trust, the transfer described in the partnership or corporation was a business purpose of the partnership or corporation, and the partnership or corporation made the transfer in exchange for property transferred to the trust or services rendered to the trust, the amount charged will be treated as a distribution to you by the foreign trust.

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.

Grantor
A grantor includes any person who creates a trust or directly or indirectly makes a gratuitous transfer of 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.

Note: If a partnership or corporation makes a gratuitous transfer to a trust, the transfer described in the partnership or corporation was a business purpose of the partnership or corporation, and the partnership or corporation made the transfer in exchange for property transferred to the trust or services rendered to the trust, the amount charged will be treated as a distribution to you by the foreign trust.

If a trust makes a gratuitous transfer to another trust, the grantor of the transferor trust is treated as the grantor of the transferee trust, except that if a trust is treated as the owner of any part of a foreign trust’s assets under sections 671 through 679, excluding section 678, the transferee trust is treated as the owner of the transferor trust.
Grantor Trust

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 in sections 671 through 679. 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.

Gross Value

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.

Nongrantor Trust

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 Grantor Trust above.

Owner

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

Property

Property means any property, whether tangible or intangible, including cash.

U.S. Agent

A U.S. agent is a U.S. person (defined below) 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 (see instructions for Part I. Lines 3a through 3g, below) in applying sections 7602, 7603, and 7604 with respect to:

- Any request by the IRS to examine records or produce testimony related to the proper U.S. tax treatment of amounts distributed, or required to be taken into account under the grantor trust rules, with respect to a foreign trust or
- Any summons by the IRS 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. and the U.S. person has a P.O. box, show the box number instead.

Specific Instructions

Period Covered

File the 2001 return for calendar year 2001 and fiscal years that begin in 2001 and end in 2002. For a fiscal year, fill in the tax year space at the top of the form.

Initial Return, Final Return, Amended Return

Initial return. If this is the foreign trust’s first return, check the “Initial return” box.

Final return. If the foreign trust ceases to exist, check the “Final return” box.

Amended return. If this Form 3520-A is filed to amend a Form 3520-A that you previously filed, check the “Amended return” box.

Part I—General Information

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

Address. 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.

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. Do not abbreviate the country name.

Line 2. If the trust did not appoint a U.S. agent, attach the following documents to Form 3520-A:

- 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 trustee summarizing the settlor’s wishes, any letter of wishes prepared by the settlor summarizing his or her wishes, and any similar documents.

U.S. Beneficiary

A U.S. beneficiary generally includes anyone 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 967(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.

U.S. Person

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)(21)), and
- Any trust if it is not a foreign trust (defined on page 1).

Lines 3a through 3g.

If a foreign trust with a U.S. owner does not benefit (directly or indirectly) from the trust (including an amended trust) during the U.S. owner’s lifetime, the U.S. owner is treated as an owner of a foreign trust.

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

The agency relationship is recognized for examining records or producing testimony, or a summons by the IRS for such records or testimony. Any U.S. citizen, resident alien, or domestic corporation (including a U.S. grantor or U.S. beneficiary of a foreign trust) may act as the U.S. agent of the trust.

In order to authorize a U.S. person to act as an agent under section 6048(b), the trust and the agent must enter into a binding agreement substantially in the format that follows. Attach a copy of the authorization to Form 3520-A.
### AUTHORIZATION OF AGENT

[Name of foreign trust] hereby authorizes [name of U.S. agent] to act as its agent solely for purposes of sections 7602, 7603, and 7604 of the Internal Revenue Code with respect to any request to examine records or produce testimony related to the proper treatment of amounts required to be taken into account under the rules of section 6048(b)(1)(A) or to any summons for such records or testimony. I certify that I have the authority to execute this authorization of agent to act on behalf of [name of foreign trust].

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<thead>
<tr>
<th>Signature of trustee</th>
<th>(title)</th>
<th>(date)</th>
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<tbody>
<tr>
<td>Your Name (type or print)</td>
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<tr>
<td>Identification Number (if any)</td>
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<tr>
<td>Address</td>
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### Line 1. Interest

Report all taxable interest income that was received during the tax year. Examples of taxable income include:
- Accounts (including certificates of deposit and money market accounts) with banks, credit unions, and thrifts.
- Notes, loans, and mortgages.
- U.S. Treasury bills, notes, and bonds.
- U.S. savings bonds.
- Original issue discount.
- Income received as a regular interest holder of a real estate mortgage pass-through entity (REGMIC).

For taxable bonds acquired after 1987, amortizable bond premium is treated as a(n) offset to the interest income instead of as a separate interest distribution (see Pub. 550, Investment Income and Expenses).

### Line 2. Dividends

Report all ordinary dividends received during the tax year.

### Line 3 and 4. Gross rents, royalties, partnership income, etc.

If the trust received a Schedule K-1 from a partnership, S corporation, or other flow-through entity, use the corresponding lines on Form 3520-A to report the interest, dividends, capital gains, etc., from the flow-through entity.

### Line 5. Capital gains (losses)

For capital gains (losses) attributable to a U.S. owner, use Schedule D (corporate or individual, whichever applies).

### Line 6. Ordinary gains (losses)

Enter the ordinary gain or (loss) from the sale or exchange of property for more than one purpose (e.g., passive activity), the fiduciary must make an interest allocation according to the rules in Temporary Regulations section 1.163-8T.

### Line 7. Other income

Enter other items of income not included on lines 1 through 6. List the types and amounts on an attached schedule if the trust has more than one item.

### Expenses

#### Line 9. Interest expense

Enter the amount of interest (subject to limitations) paid or incurred by the trust on amounts borrowed by the trust or on debt acquired by the trust that is not reported elsewhere in Part II.

If the proceeds of a loan were used for more than one purpose (e.g., to purchase a portfolio investment and to acquire an interest in a passive activity), the fiduciary must make an interest allocation according to the rules in Temporary Regulations section 1.163-8T.

#### Line 10a. Foreign taxes

A foreign tax includes only a tax imposed by the authority of a foreign country.

#### Line 10b. State and local taxes

Enter any deductible state and local income or real property taxes paid or incurred during the tax year.

### Part II—Foreign Trust Income Statement

Include all income from U.S. and non-U.S. sources. This financial statement must reasonably reflect the trust's income under U.S. income tax principles.
and FMV (dollar amount) for each U.S. owner and beneficiary receiving a distribution. If more space is needed, attach a schedule.

Prepare a separate Foreign Grantor Trust Owner Statement (see below) or a Foreign Grantor Trust Beneficiary Statement (see below) for each U.S. owner or for each U.S. person who receives a distribution from the trust.

Part III—Foreign Trust Balance Sheet

List all assets and liabilities of the trust, including those assets and liabilities attributable to the portion(s) of the trust (if any) not treated as owned by a U.S. person.

The balance sheet should reflect FMV. Include certificates of deposit as cash on line 1.

Line 18. Accumulated trust income. Include on line 18 the total amount of trust income accumulated and not distributed.

Foreign Grantor Trust Owner Statement

A copy of this statement (page 3 of Form 3520-A) must be furnished to each U.S. person who is treated as an owner of the foreign trust under grantor trust rules. The statement must be furnished no later than the 15th day of the 3rd month following the end of the trust’s tax year or later, if an extension of time to file is granted.

Line 8. Trust documents. If the trust did not appoint a U.S. agent, list the documents attached to a Form 3520-A filed within the last 3 years. See the instructions for line 2, Part I, for a list of documents the trust may have been required to attach to Form 3520-A.

Statement of foreign trust income attributable to U.S. owner. The U.S. owner must include the income and expenses attributable to the owner on its U.S. income tax return. The statement must be furnished to the U.S. owner no later than the 15th day of the 3rd month after the end of the trust’s tax year or later, if an extension of time to file is granted.

The amounts on the statement must include the portion of income reported by the foreign trust deemed attributable to the U.S. owner.

The foreign trust may need to furnish to the U.S. owner additional information, including applicable schedules, to ensure that the owner accurately reports income and expenses on the owner’s U.S. income tax return.

Foreign Grantor Trust Beneficiary Statement

A copy of this statement (page 4 of Form 3520-A) must be furnished to each U.S. beneficiary who receives a distribution from the foreign trust during the tax year. The statement must be furnished to the U.S. beneficiary no later than the 15th day of the 3rd month following the end of the trust’s tax year or later, if an extension of time to file is granted.

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.

If you have comments concerning the accuracy of these time estimates or suggestions for making the form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743–0001. Do not send the form to this office. Instead, see When and Where To File on page 1.