2003

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.

A Change To Note

A Canadian registered retirement savings plan (RRSP) or a Canadian registered retirement income fund (RRIF) is relieved of any obligation to file Form 3520-A with respect to a U.S. citizen or resident alien interest holder who is subject to the simplified information reporting requirements of Notice 2003-75, 2003-50 I.R.B. 1204, with respect to the RRSP or RRIF. It is anticipated that most, if not all, such U.S. citizen or resident aliens will be subject to the simplified reporting rules described in Notice 2003-75.

How To Access the Internal Revenue Bulletin (I.R.B.)


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 with a U.S. owner must file Form 3520-A in order for the U.S. owner 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 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.

Exception. Canadian RRSPs and Canadian RRIFs are not required to file Form 3520-A with respect to a U.S. citizen or resident alien interest holder who is subject to the simplified information reporting requirements of Notice 2003-75 with respect to the RRSP or RRIF. In addition, other eligible foreign plans described in Notice 2003-75, 2003-50 I.R.B. 1204, with respect to the RRSP or RRIF. It is anticipated that most, if not all, such U.S. citizen or resident aliens will be subject to the simplified reporting rules described in Notice 2003-75.

Who Must Sign

• 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 required information to all U.S. beneficiaries. See section 6677(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).

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 required information to all U.S. beneficiaries. See section 6677(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).

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 for the U.S. owner to satisfy its annual information reporting requirements under section 6048(b). Each U.S. person treated as an owner of any portion of the foreign trust 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.

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.

The paid preparer must complete the required preparer information and:

• Sign the return in the space provided for the preparer’s signature.

• Give a copy of the return to the filer.

Reasonable cause.

No penalties will be imposed if there are 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 a foreign trust is generally treated as a loan from the trust. See Section V of Notice 97-34, 1997-25 I.R.B. 22.

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 all substantial decisions of the trust.
2. One or more U.S. persons have the authority to control a part or a portion of the trust assets.

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 partners or shareholders are generally treated as the grantors of the trust, unless the partnership or corporation made the transfer for a business purpose of the partnership or corporation.

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 person with a general power of appointment over the transferor trust exercises that power in favor of another trust, such person is treated as the grantor of the transferee trust, even if the grantor of the transferor 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. 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, on page 3) 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. 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 summoned 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-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 Section IV(B) of Notice 97-34.

U.S. Beneficiary
A U.S. beneficiary generally 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.

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)(31)), and
- Any trust if it is not a foreign trust (defined above).

Specific Instructions

Period Covered
File the 2003 return for calendar year 2003 and fiscal years that begin in 2003 and end in 2004. 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.** 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 trustees summarizing the settlor’s wishes, any letter of wishes prepared by the settlor summarizing his or her wishes, and any similar documents.

**Lines 3a through 3g.** If a foreign trust with a U.S. owner does not have a U.S. agent, the IRS may determine the amounts required to be taken into account with respect to the foreign trust by the U.S. owner. See section 6048(b)(2). In order to avoid this, a U.S. owner of a foreign trust should ensure that the foreign trust appoints a U.S. person to act as the foreign trust’s limited agent for purposes of applying sections 7602, 7603, and 7604 with respect to a request by the IRS to examine records or produce 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 on this page under Authorization of Agent. Attach a copy of the authorization to Form 3520-A.

**Line 5.** Attach a statement that provides the following information concerning the transfer:

1. Name, U.S. taxpayer identification number (if any), and country of organization or residence of the person to whom the property was transferred.
2. A general description of the transfer, and any broader transaction of which it forms a part, including a chronology of the transfers involved and an identification of the other parties to the transaction to the extent known.
3. A description of the property transferred, including the estimated FMV and the adjusted basis of the property.
4. A description of the consideration received by the trust, including its estimated FMV, and for stock or securities, the class or type, amount, and characteristics of the interest received. If no consideration was received by the trust, indicate whether the trust or a U.S. owner exercises any powers over the entity to which the property was transferred (including a description of such powers), and identify the name, U.S. taxpayer identification number (if any), and country of organization or residence of all beneficial owners of such entity.
5. To the extent known, a description of any subsequent transfer of the property, including the name, U.S. taxpayer identification number (if any), and country of organization or residence of the person to whom the property was subsequently transferred.

The statement must also contain a description of the trust ownership structure setting forth the name, U.S. taxpayer identification number (if any), and country of organization of all entities in which the trust has an ownership interest, including an ownership chart showing the trust’s position in the chain of ownership and the percentages of ownership.

**Note:** The term “person” includes an individual or an entity, whether U.S. or foreign. See page 2 for the definition of U.S. person. A foreign person is an individual or entity that is not a U.S. person.

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**AUTHORIZED PERSON**

**Signature of trust**

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<th>(or other authorized person)</th>
<th>(title)</th>
<th>(date)</th>
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<tbody>
<tr>
<td>Your Name (type or print)</td>
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**Address**

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<th>Identification Number (if any)</th>
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<tbody>
<tr>
<td>Your Name (type or print)</td>
</tr>
<tr>
<td>Identification Number (if any)</td>
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**Line 2. Dividends.** Report all ordinary dividends received during the tax year.

**Line 5. Capital gains (losses).** For capital gains (losses) attributable to a U.S. owner, use Schedule D (corporate or individual, whichever applies).

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**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.

**Income**

**Line 1. Interest.** Report all taxable interest income that was received during the tax year. Examples of taxable interest include, but are not limited to, interest from:

- Accounts (including certificates of deposit and money market accounts) with banks, credit unions, and thrift institutions.
- 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 investment conduit (REMIC).

For taxable bonds acquired after 1987, amortizable bond premium is treated as an offset to the interest income instead of as a separate interest deduction. See Pub. 550, Investment Income and Expenses.

**Line 2. Dividends.** Report all ordinary dividends received during the tax year.

**Note:** Report capital gain distributions on line 5.

**Line 4. Income (loss) from partnerships, fiduciaries, etc.** Enter the trust’s share of income or (losses) from partnerships, S corporations, estates, other trusts, and REMICs.

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).
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 the 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. See When and Where To File on page 1.

Identification numbers and addresses. See the instructions for Part I on page 2 for information on entering identification numbers and addresses.

Line 8. Trust documents. If the trust did not appoint a U.S. agent, list the documents attached to the current year Form 3520-A and those attached to a Form 3520-A filed within the last 3 years. Specify the years the documents were attached. See the instructions for line 2, Part I, for a list of documents the trust is required to attach to Form 3520-A.

Statement of Foreign Trust Income Attributable to U.S. Owner

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.

Exception. Do not complete this statement for a U.S. person and local income or real property taxes paid or incurred during the tax year that are not reported elsewhere in Part II.

Do not complete this statement for a U.S. person and local income or real property taxes paid or incurred during the tax year that are not reported elsewhere in Part II.

Identification numbers and addresses. See the instructions for Part I on page 2 for information on entering identification numbers and addresses.

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 requirements for making the form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating 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.

The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.