

Foreign Trusts, 1990

Data Release

During 1990, "U.S. persons" transferred \$272.7 million in money and property to 133 foreign trusts reported on Forms 3520, *Creation of or Transfers to Certain Foreign Trusts* [1]. The average transfer value per trust was \$2.1 million. Of the 133 foreign trusts, nearly 55 percent were created under the laws of Canada. However, these Canadian trusts reported only 16 percent of the transfer value for all foreign trusts. While the number of foreign trusts with 1990 transfers was down from the 255 for 1986, the total and average transfer values were considerably higher than the 1986 values, which were \$16.9 million and \$0.1 million, respectively. In 1986, Canadian trusts represented nearly 50 percent of the 255 total foreign trusts and reported only 8 percent of the total transfer value. The principal difference in the country data between 1986 and 1990 is attributable to Liechtenstein. Although the number of trusts created under the laws of Liechtenstein decreased from nine to seven between 1986 and 1990, the transfer value increased from \$0.5 million to \$94.1 million, growing from 3 percent of the total transfer value in 1986 to nearly 35 percent in 1990 [2]. None of the nine trusts from 1986 was represented in the 1990 data, therefore the increase did not result from growth of these trusts. Stocks and bonds accounted for \$77.6 million transferred to Liechtenstein in trusts in 1990 [3].

A total of 291 Form 3520-A, *Annual Return of Foreign Trust with U.S. Beneficiaries*, returns were received for 1990, representing foreign trusts which had received transfers from U.S. persons for the benefit of U.S. beneficiaries. These trusts had \$154.0 million in total assets. U.S. grantors and transferors reported \$4.8 million of net income on the trusts' books and records, \$3.0 million of which was the reported allocable share of these grantors and transferors. Over 64 percent of the returns were filed for trusts created under the laws of Canada. These trusts accounted for only 4 percent of the total grantor/transferor portion of net income and 9 percent of the total net income reported on the trusts' books and records. (The reasons why these two amounts were not equal are discussed below.) By comparison, for 1986, there were 411 returns filed with \$2.6 million of net income on the trusts' books and records. (There are no statistics on the grantor/transferor portion for 1986.) These trusts accumulated \$94.5 million of assets. Although over 50 percent of the trusts were created under the laws of Canada, the Canadian trusts constituted only 1 percent of total net income reported on the trusts' books and records. Most of the

Canadian trusts were set up as savings plans by individuals who transferred funds for the purpose of deferring Canadian taxes, although Canada limited the amount of income on which tax could be deferred.

Trusts are fiduciary arrangements created by "grantors" who transfer their ownership of property to "trustees" who are legally committed to protect or use that property for the benefit of "beneficiaries." The arrangement can be an "inter vivos trust" created by a living grantor, or a "testamentary trust" created as the result of a grantor's will. For a trust to be valid there must be a separation of interests between at least two parties. No one person can be the grantor, trustee and sole beneficiary of a trust at the same time.

Section 7701(a)(31) of the Internal Revenue Code states that a trust is "foreign" when the income of the trust results from sources outside the United States and is not includible in U.S. gross income for income tax purposes. A foreign trust is created and governed under the laws of a foreign country. In contrast to domestic trusts, which are taxed as U.S. citizens or residents, foreign trusts are taxed as nonresidents. Foreign trusts are frequently created by grantors and transferors mainly to benefit from tax haven countries favorable to foreign persons or, in the case of the Canadian Registered Retirement Savings Plans (R.R.S.P.), to benefit from deferring taxation of current income set aside for retirement purposes.

Form 3520 is an information return reporting the amount of money and value of property transferred to a foreign trust. Any U.S. person who either creates a foreign trust or transfers money or property to a foreign trust is required to file this form on or before the 90th day after the date of the creation or transfer, with exceptions for contributions to certain employees' trusts. The return must be filed by the grantor in the case of an inter vivos trust; the fiduciary of the estate in the case of a testamentary trust; or the transferor, who is any U.S. person other than the grantor or fiduciary who directly or indirectly transfers money or property to a foreign trust. Table 1 presents data on transferred property from Forms 3520 in the following categories: cash, corporate stocks and bonds, real estate and "other." "Other" property includes personal property such as cars and furniture, as well as life insurance policies and government securities.

Form 3520-A is an information return reporting foreign trust income, expenses, assets and liabilities. Any U.S. person who transfers money or property to a foreign trust that has one or more U.S. beneficiaries is required to file this form annually as long as the trust has at least one U.S. beneficiary [4]. Exempt from filing are those persons transferring property to certain employees' trusts or

This data release was written by Christine Ferguson, an economist with the Foreign Returns Analysis Section, under the direction of Chris Carson, Chief.

Foreign Trusts, 1990

annuity plans. Table 2 shows income statement items per the books and records of the foreign trusts and the share attributable to U.S. grantors and transferors of those trusts.

Data Sources and Limitations

The information for this data release was based on all Forms 3520 and 3520-A filed at the Internal Revenue Services' Philadelphia Service Center for Tax Year 1990. Because all the returns were used for the statistics, the data are not subject to sampling error. However, the data may contain nonsampling errors. For instance, in Table 2, there is \$3.0 million reported as the grantor/transferor portion of net income, while \$4.8 million is reported as net income on the trusts' books and records. Both the grantor/transferor portion of net income and net income on the trusts' books and records are required to be reported and should be equivalent except in the case of multiple owners of a trust filing separate returns. Where there are multiple owners of a trust, a grantor or transferor may report only the portion he or she owns if the other grantors or transferors also file a Form 3520-A reporting their portion of the foreign trust income. Otherwise the owners are required to file a combined return. However, the difference between the two net incomes occurs from those few cases where there are multiple U.S. owners of foreign trusts and the total net income from the trusts' books and records is reported in total by each owner, thus double counting the total net income. This difference is also in part due to the habits of Canadian R.R.S.P. trust filers and some filers who leave the return incomplete. Form 3520-A filers of R.R.S.P. trusts from Canada may elect not to report undistributed income and to defer taxation. While these filers do not report the grantor/transferor portion of trust income they generally do report the trust income from the trusts' books and records. Therefore, the total grantor/transferor portion of net income, \$3.0 million, may be understated in the statistics, while the total net income of \$4.8 million from the books and records may be overstated due to double counting of income by multiple owners of a shared trust. However, foreign trusts with multiple owners are a rarity. Also the trust assets are understated to an extent, due to a few

returns which were filed incompletely.

The different filing requirements of Forms 3520 and 3520-A prohibits an exact match of these forms. For instance, the filing requirements of Forms 3520-A included the condition of one or more U.S. beneficiaries, while Forms 3520 had no such requirement. Further, Forms 3520 were required to be filed within 90 days when a transfer had been made or a foreign trust had been created. In contrast, Forms 3520-A were required to be filed annually, so long as the trust had one or more U.S. beneficiaries, beginning with the year the first transfer was made.

Notes and References

- [1] Internal Revenue Code section 7701(a)(30)-(31) states that a "U.S. person" includes a citizen or resident of the United States; a domestic corporation; a domestic partnership; and any estate or trust, other than a foreign estate or foreign trust, the income of which (from sources outside the United States, which is not effectively connected with the conduct of a trade or business within the United States) is not considered to be income for U.S. income tax purposes.
- [2] See Hobbs, James R., "Foreign Trusts, 1986," *Statistics of Income Bulletin*, Spring 1988, Volume 7, Number 4.
- [3] For the purpose of this data release, stocks and bonds include partnership interests.
- [4] Foreign trusts are treated as having U.S. beneficiaries for the tax year unless:
 - (a) no part of the income or corpus of the trust may be paid or accumulated during the tax year to or for the benefit of a U.S. person under the terms of the trust, or
 - (b) no part of the income or corpus of the trust may be paid to or for the benefit of a U.S. person if the trust was terminated at any time during the tax year.

Foreign Trusts, 1990

Table 1.—Forms 3520: Number of Trusts, Total Value and Type of Property Transferred and Average Transfer Value, by Country Where the Trust was Created

[Money amounts are in thousands of U.S. dollars]

Country	Number of trusts	Total transfer value	Type of property transferred				Average transfer value per trust
			Cash	Corporate stocks and bonds	Real estate	Other property	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
All countries.....	133	272,663	34,833	105,835	88,560	43,435	2,050
Canada.....	73	44,278	7,211	5	—	37,063	607
Channel Islands.....	16	15,050	1,501	13,549	—	—	941
Liechtenstein.....	7	94,088	14,925	77,589	1,339	235	13,441
Bermuda.....	6	2,689	1,181	1,508	—	—	448
British Virgin Islands.....	6	14	14	—	—	—	2
United Kingdom.....	5	1,353	113	1,240	—	—	271
Hong Kong.....	3	1,677	300	—	1,346	31	559
Other countries.....	17	113,513	9,588	11,944	85,875	6,106	6,677

NOTE: Detail may not add to totals because of rounding.

Foreign Trusts, 1990

Table 2.--Forms 3520-A: Income Statements and Balance Sheets, by Country Where the Trust was Created

[Money amounts are in thousands of U.S. dollars]

Country	Number of returns	Total income and expenses from trust books and records			Grantor or transferor portion of income and expenses					
		Total income (less loss)	Total expenses	Net income (less deficit)	Income (less loss)					
					Total	Dividends	Interest	Partnerships and other fiduciaries	Gross rents and royalties	Gross profit from trade or business
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	
All countries.....	291	6,450	1,674	4,777	4,071	628	3,132	188	88	104
Canada.....	187	440	11	430	143	36	100	--	25	--
Channel Islands.....	23	2,080	338	1,741	1,273	2	1,414	-2	25	--
Bermuda.....	19	1,558	477	1,081	272	89	169	--	--	--
Cayman Islands.....	15	249	133	116	249	33	162	--	--	--
United Kingdom.....	13	825	263	562	801	164	642	-1	36	--
Liechtenstein.....	9	454	137	317	425	122	255	--	--	--
Australia.....	6	138	202	-64	200	--	21	75	--	104
Bahamas.....	5	92	9	84	92	--	85	--	--	--
Mexico.....	5	123	22	101	123	--	--	116	2	--
British Virgin Islands..	3	398	16	382	398	181	253	--	--	--
Switzerland.....	3	62	65	-4	62	--	--	--	--	--
Other countries.....	3	33	3	30	33	1	30	--	--	--

Country	Grantor or transferor portion of income and expenses--Continued					Assets				
	Income (less loss)--Continued			Total expenses	Net income (less deficit)	Total	Cash	Accounts receivable (net)	Notes receivable	Inventories
	Net gain, sales of capital assets	Ordinary gain, noncapital assets	Other							
(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	
All countries.....	-341	-2	273	1,070	3,000	154,044	40,478	308	7,455	471
Canada.....	-21	-1	3	10	133	48,132	10,197	--	--	--
Channel Islands.....	-288	3	120	287	987	42,609	12,969	--	1,880	--
Bermuda.....	--	--	14	68	204	20,903	12,907	--	--	--
Cayman Islands.....	-22	--	76	118	131	5,899	1,000	11	409	--
United Kingdom.....	-26	-16	1	260	541	11,486	2,618	--	1,574	--
Liechtenstein.....	-13	--	60	49	376	9,357	496	--	--	--
Australia.....	--	--	--	199	1	2,025	48	143	488	471
Bahamas.....	--	7	--	6	86	2,057	95	63	--	--
Mexico.....	--	5	--	22	101	4,192	--	91	--	--
British Virgin Islands..	-36	--	--	16	382	5,583	92	--	3,103	--
Switzerland.....	62	--	(¹)	36	25	724	24	--	--	--
Other countries.....	2	--	--	(¹)	33	1,076	32	--	--	--

Country	Assets--Continued								Total liabilities	Net worth
	Government obligations	Non-government obligations	Corporate stock	Mortgage loans	Other investments	Depreciable assets (net)	Land	Other assets		
(21)	(22)	(23)	(24)	(25)	(26)	(27)	(28)	(29)	(30)	
All countries.....	7,294	11,656	25,693	48	54,849	1,105	1,148	3,539	6,737	147,307
Canada.....	--	298	284	--	37,346	--	--	6	206	47,926
Channel Islands.....	2,008	2,387	14,577	--	8,040	--	--	749	522	42,087
Bermuda.....	682	185	5,742	--	1,388	--	--	--	--	20,903
Cayman Islands.....	--	1,723	506	48	2,085	74	40	2	468	5,431
United Kingdom.....	841	4,267	402	--	1,274	119	225	167	1,872	9,614
Liechtenstein.....	1,792	1,925	3,181	--	737	--	--	1,226	729	8,628
Australia.....	--	--	--	--	205	11	546	112	1,573	452
Bahamas.....	875	872	--	--	151	--	--	(¹)	(¹)	2,057
Mexico.....	--	--	--	--	3,230	--	337	533	30	4,162
British Virgin Islands..	236	--	1,000	--	250	901	--	--	1,246	4,337
Switzerland.....	--	--	--	--	(¹)	--	--	700	92	632
Other countries.....	860	--	--	--	143	--	--	42	(¹)	1,076

¹ Less than \$500.

NOTE: Detail may not add to totals because of rounding.