

2004



Department of the Treasury
Internal Revenue Service

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 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 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.

Exception. Canadian registered retirement savings plans (RRSPs) and Canadian registered retirement income funds (RRIFs) are not required to file Form 3520-A with respect to a U.S. citizen or resident alien interest holder who is eligible to file Form 8891, U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans, with respect to the RRSP or RRIF. In addition, other eligible Canadian plans within the meaning of section 3 of Rev. Proc. 2002-23, 2002-15 I.R.B. 744, are relieved of any obligation to file Form 3520-A with respect to a U.S. citizen or resident alien beneficiary who has made an election in accordance with section 4 of Rev. Proc. 2002-23 and has complied with the annual reporting requirements of Rev. Proc. 2002-23.

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** (page 3) and the **Foreign Grantor Trust Beneficiary Statement** (page 4) 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, see Form 2758, 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.

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 all of the information required by section 6048(b) or includes incorrect information. 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.

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 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
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 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 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. 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 or 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 2004 return for calendar year 2004 and fiscal years that begin in 2004 and end in 2005. 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. Attach a copy of the authorization to Form 3520-A.

AUTHORIZATION OF AGENT

[Name of foreign trust] hereby expressly 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].

Signature of trustee (or other authorized person) (title) (date)

Your Name (type or print)

Identification Number (if any)

Address

[Name of agent] accepts this appointment to act as agent for [name of foreign trust] for the above purpose. I certify that I have the authority to execute this authorization of agent to act on behalf of [name of foreign trust] and agree to accept service of process for the above purposes.

Signature of agent (title) (date)

Your Name (type or print)

Identification Number (if any)

Address

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.

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).

Line 6. Ordinary gains (losses). Enter the ordinary gain or (loss) from the sale or exchange of property other than capital assets and also from involuntary conversions (other than casualty or theft).

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.

Items to be reported on line 7 include any part of a total distribution shown on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., that is treated as ordinary income. For more information, see the separate instructions for Form 4972, Tax on Lump-Sum Distributions.

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.

Do not include interest paid on indebtedness incurred or continued to purchase or carry obligations on which the interest is wholly exempt from income tax.

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 that are not reported elsewhere in Part II.

Do **not** deduct on line 10b or on any other line of Part II:

- Federal income taxes.
- Estate, inheritance, legacy, succession, and gift taxes.
- Federal duties and excise taxes.
- State and local sales taxes. Instead, treat these taxes as part of the cost of the property.

Line 11. Amortization and depreciation (depletion). A reasonable amount is allowed as a depreciation deduction for the exhaustion, wear, and tear of:

- Property used in a trade or business or
- Property held for the production of income.

Line 12. Trustee and advisor fees. Enter the deductible fees paid or incurred to the fiduciary for administering the trust during the tax year.

Line 13. Charitable contributions. Generally, any part of the income reported on line 8 that is paid (or treated as paid) during the tax year for a charitable purpose specified in section 170(c) is allowed as a deduction. It is not necessary that the charitable organization be created or organized in the United States.

Line 14. Other expenses. Enter other items of expense not listed on lines 9 through 13. List the type and amount on an attached schedule if the trust has more than one item.

Lines 17b and 17c. Distributions to U.S. owners and beneficiaries. Separately list the total amount of distributions to each U.S. owner and beneficiary. List the full name, identification number, date of distribution, 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 **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 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 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 for any portion of the trust of which that U.S. person is treated as the owner.

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. 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.

Privacy and 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. Section 6109 requires return preparers to provide their identifying numbers on the return.

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 for 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. However, section 6103 allows or requires the Internal Revenue Service to disclose or give the information shown on your tax return to others as described in the Code. For example, we may disclose your tax information to the Department of Justice to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, U.S. commonwealths or possessions, and certain foreign governments to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file the form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	37 hr., 18 min.
Learning about the law or the form	2 hr., 40 min.
Preparing and sending the form to the IRS	3 hr., 24 min.

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 Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224. Do not send the form to this office. Instead, see *When and Where To File* on page 1.
