



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.

Pending Legislation May Affect Form 3520

At the time these instructions were sent to print, legislation was pending that would:

- Clarify when foreign grantor trusts are treated as having, or presumed to have, a U.S. beneficiary,
- Provide rules pertaining to the uncompensated use of trust property and clarify when such use is treated as a distribution,
- Provide for the possibility of additional reporting for U.S. owners of foreign grantor trusts, and
- Provide for a minimum penalty with respect to failure to report on certain foreign trusts.

General Instructions

Purpose of Form

U.S. persons (and executors of estates of U.S. decedents) 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 3 and 4.

Complete the identifying information on page 1 of the form 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 identifying information on page 1 of the form and Part II. See the instructions for Part II.

3. You are a U.S. person who received (directly or indirectly) a distribution from a foreign trust during the current tax year **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 3) during the current tax year.

Complete the identifying information on page 1 of the form and Part III. See the instructions for Part III.

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

- 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
- More than \$14,139 from foreign corporations or foreign partnerships (including foreign persons related to such foreign corporations or foreign partnerships) that you treated as gifts.

Complete the identifying information on page 1 of the form 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 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.
- Most fair market value (FMV) transfers by a U.S. person to a foreign trust. However, some FMV transfers must nevertheless be reported on Form 3520 (e.g., transfers in exchange for obligations that are treated as qualified obligations, transfers of appreciated property to a foreign trust for which the U.S. transferor does not immediately recognize all of the gain on the property transferred, transfers involving a U.S. transferor that is related to the foreign trust). See Section III of Notice 97-34, 1997-25 I.R.B. 22.
- 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, ownership of, and distributions from a Canadian registered retirement savings plan (RRSP) or a Canadian registered retirement income fund (RRIF), where the U.S. citizen or resident alien holding an interest in such RRSP or RRIF 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.
- 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).
- Domestic trusts that become foreign trusts to the extent the trust is treated as owned by a foreign person, after application of section 672(f).

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.

Additional Reporting Information

For more information on foreign trust reporting, including abusive foreign trust schemes, go to the IRS website at www.irs.gov.

When and Where To File

In general, Form 3520 is due on the date that your income tax return is due, including extensions. In the case of a Form 3520 filed with respect to a U.S. decedent, Form 3520 is due on the date that the estate tax return is due (or would be due if the estate were required to file a return), including extensions. Send Form 3520 to the Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409.

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

Note. If a complete Form 3520 is not filed by the due date, including extensions, the time for assessment of any tax imposed with respect to any event or period to which the information required to be reported in Parts I through III of such Form 3520 relates, will not expire before the date that is 3 years after the date on which the required information is reported. See section 6501(c)(8).

Who Must Sign

If the return is filed by:

- An individual or a 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) who is 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.

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 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). See Form 8082 for more details.

Penalties

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

- 35% of the gross value of any property transferred to a foreign trust for failure by a U.S. transferor to report the transfer,
- 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
- 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).

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. For example, 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.

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 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.

See the instructions for Part III, line 25, on page 7, for another example of a distribution from a foreign trust.

Foreign Trust and Domestic 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.

Gratuitous Transfer

A gratuitous transfer to a foreign trust is any transfer to the trust other than (a) a transfer for FMV or (b) a distribution to the trust with respect to an interest held by the trust (i) in an entity other than a trust (e.g., a corporation or a partnership) or (ii) in an investment trust described in Regulations section 301.7701-4(c), a liquidating trust described in Regulations section 301.7701-4(d), or an environmental remediation trust described in Regulations section 301.7701-4(e).

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 contributes 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. Obligation and qualified obligation are defined below.

Gross Reportable Amount

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

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.

Guarantee

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 maintain 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.

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.

Obligation

An obligation includes any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other evidence of indebtedness, and, to the extent not previously described, any annuity contract.

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.

Qualified Obligation

A qualified obligation, for purposes of this form, is any obligation only 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 tax 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 obligation, including principal and interest payments, on Part I, Schedule C, and Part III, as applicable, for each year that the obligation is outstanding.

Related Person

A related person generally includes any person who is related to you for purposes of section 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) and the regulations under sections 267 and 707(b).

Person related to a 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 the definition of related person above.

Reportable Event

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. This includes transfers that are deemed to have occurred under sections 679(a)(4) and (5).
3. The death of a citizen or resident of the United States if:
 - The decedent was treated as the owner of any portion of a foreign trust under the grantor trust rules or
 - Any portion of a foreign trust was included in the gross estate of the decedent.

Responsible Party

Responsible party means:

- The grantor in the case of the creation of an inter vivos trust,
- The transferor, in the case of a reportable event (defined above) other than a transfer by reason of death, or
- The executor of the decedent's estate in any other case (whether or not the executor is a U.S. person).

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 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. See *Identification numbers* on page 5.

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 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 U.S. 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)(A)), and
- Any domestic trust (defined on page 2).

U.S. Transferor

A U.S. transferor is any U.S. person who:

1. Creates or settles a foreign trust.
2. Directly or indirectly transfers money or property to a foreign trust. This includes a U.S. citizen or resident who has made a deemed transfer under section 679(a)(4) or a U.S. resident who has made a deemed transfer under section 679(a)(5).
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.

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.

Specific Instructions

Period Covered

File the 2009 return for calendar year 2009 and fiscal years that begin in 2009 and end in 2010. For a fiscal year, fill in the tax year space at the top of the form.

Item A—Initial Return, Final Return, Amended Return

Initial return. If this is the first return you are filing concerning the foreign trust identified, check the “Initial return” box.

Final return. If no further returns for transactions with the foreign trust are required, check the “Final return” box.

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 tax 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 previously filed, check the “Amended return” box.

Identifying Information

Service Center. Generally, enter the name of the Service Center where you file your income tax return. However, if you are an executor filing a Form 3520 with respect to a U.S. decedent, provide both the name of the Service Center where the decedent’s final income tax return will be filed, and the name of the Service Center where the estate tax return will be filed. Please enter the information as follows. First enter the name of the Service Center where the decedent’s final income tax return will be filed. Then enter the name of the Service Center where the estate tax return will be filed, followed by “(estate tax return).”

If your income tax return is filed electronically, enter “e-filed.”

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.



Do not enter a preparer tax identification number (PTIN) in any entry space on Form 3520 other than the entry space for “Preparer’s SSN or PTIN” at the bottom of page 1 of the form.

Address. Include the room, suite, 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 1. This line identifies the person that is filing 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 4. If you are the executor of the estate of a U.S. citizen or resident, you must provide information about the decedent on lines 4a through 4e. You must also check the applicable box on line 4f to indicate which of the following applies: the U.S. decedent made a transfer to a foreign trust by reason of death, the U.S. decedent was treated as the owner of a portion of a foreign trust immediately prior to death, or the estate of the U.S. decedent included assets of a foreign trust.

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 4).

Note. Although the basic reporting requirements for Form 3520 are contained in section 6048 (and are clarified by Notice 97-34), the reporting requirements have been clarified by the regulations under sections 679 and 684. Accordingly, the regulations under sections 679 and 684 should be referred to for additional clarification for transfers that are required to be reported in Part I of Form 3520.

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

Lines 6a and 6b. Enter the applicable two-letter code from the list at:

<http://www.irs.gov/efile/article/0,,id=175595,00.html>

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 (see Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships).

Line 8. If the transfer was a completed gift (see Regulations section 25.2511-2) 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 4.

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 and complete Part II.

Schedule A—Obligations of a Related Trust

Line 11a. The FMV of an obligation of the trust (or an obligation of another 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 page 3 for the definitions of obligation and qualified obligation. See page 4 for the definition of person related to a foreign trust.

Lines 12 and 26. If you answered “Yes” to the question on line 11b (line 25, column (e)) with respect to any obligation, you generally must answer “Yes” to the question on line 12 (line 26). 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 to a date 3 years after the maturity date of the obligation. This form will be deemed to be agreed upon and executed by the IRS for purposes of Regulations section 301.6501(c)-1(d).

If you answer “No” to the question on line 12 (line 26), you generally may not treat an obligation as a qualified obligation on line 11b (line 25, column (e)). The one exception to this is if the maturity date of the obligation does not extend beyond the end of your tax year for which you are reporting and such obligation is paid within that tax year.

Schedule B—Gratuitous Transfers

Complete the applicable portions of Schedule B with respect to all reportable events (defined on page 4) that took place during the current tax year.

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.
- For transfers 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. Penalties may be imposed for failure to report all required information. See *Penalties* on page 2.

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

Note. For 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 recognized on Form 3520, it must 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 15. Enter the name, address, whether the person is a U.S. beneficiary (defined on page 4), and taxpayer identification number, if any, of all reportable 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 17. Enter the name, address, and taxpayer identification number (if any) of any person, other than those listed on line 16, that has significant powers over the trust (e.g., “protectors,” “enforcers,” any person that must approve trustee decisions or otherwise direct trustees, any person with a power of appointment, any person with powers to remove or appoint trustees, etc.). Include a description of each person’s powers. If there is not enough space, attach a statement.

Line 18. If you checked “No” on line 3 (or you did not complete lines 3a through 3g) 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.
- A copy of the trust’s financial statements, including a balance sheet and an income statement similar to those shown on 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 C—Qualified Obligations Outstanding in the Current Tax Year

Line 19. Provide information on the status of outstanding obligations of the related foreign trust (or 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 in 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 Section III(C)(2) of 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 tax year. You are required to enter a taxpayer identification number for such foreign trust on line 2b.

Line 20. 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 21. In columns (a) and (b), enter the applicable two-letter code from the list at:
<http://www.irs.gov/efile/article/0,,id=175595,00.html>.

Line 22. If “Yes,” the copy of the Foreign Grantor Trust Owner Statement (page 3 of 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 IRS. See section 6677. Also see *Penalties* on page 2.

Line 23. Enter the FMV of the trust assets that you are treated as owning. Include all assets at FMV as of the end of the tax 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 23 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 2.

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 24. Report any cash or other 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 must be reported on line 25. For example, if you are a partner in a 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 24, column (c). The filer is permitted to enter the basis of the property in the hands of the beneficiary (as determined under section 643(e)(1)), if lower than the FMV of the property, but only if the taxpayer is not required to complete Schedule A (lines 31 through 38) due to lack of documentation. For these purposes, lack of documentation refers to a situation in which the filer checked “No” on line 29 or 30 because (a) the beneficiary did not receive a Foreign Grantor Trust Beneficiary Statement or a Foreign Nongrantor Trust Beneficiary Statement from the trust or (b)

such statement did not contain all six of the items specified under the instructions for line 29 or line 30 below.

Line 25. 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 25, column (e). Answer "Yes" if your obligation given in exchange for the loan is a qualified obligation (defined on page 3).

Line 26. See *Lines 12 and 26* on page 5.

Line 27. Penalties may be imposed for failure to accurately report all distributions received during the current tax year. See *Penalties* on page 2.

Line 28. 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 as such on line 25. See Section V(A) of Notice 97-34.

Lines 29 and 30. If any of the six items required for the Foreign Grantor Trust Beneficiary Statement (see *Line 29* below) or for the Foreign Nongrantor Trust Beneficiary Statement (see *Line 30* below) is missing, you must check "No" on line 29 or line 30, as applicable.

Also, if you answer "Yes" to line 29 or line 30, and the foreign trust or 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.

Note. If the question on line 29 or 30 is not applicable, skip the question. Do not check the "No" box if the question is not applicable.

Line 29. If "Yes," attach the Foreign Grantor Trust Beneficiary Statement (page 4 of Form 3520-A) from the foreign trust and do not complete the rest 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.

In addition to basic identifying information (i.e., name, address, TIN, etc.) about the foreign trust and its trustee, this statement must contain these items:

1. The first and last day of the tax 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 the Code section that 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 tax 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 (defined on page 4). If the trust has a U.S. agent, include the name, address, and taxpayer identification number of the agent.

Line 30. 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 any grantor of the trust is a partnership or a foreign corporation. If so, attach an explanation of the relevant facts.

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 29 above as well as basic identifying information (e.g., name, address, TIN, etc.) about the foreign trust and its trustee.

Schedule A—Default Calculation of Trust Distributions

If you answered "Yes" to line 30, 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 years), you must continue to complete Schedule A for all future years, even if you are able to answer "Yes" to line 30 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 30 in the year of termination.)

Line 32. To the best of your knowledge, state the number of years the trust has been in existence as a foreign 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 foreign trust, do not complete the rest of Part III (you do not have an accumulation distribution).

Line 33. 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 foreign 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 33 would be \$320 (\$50 + \$120 + \$150).

Line 35. Divide line 34 by 3 (or the number of years the trust has been a foreign trust if fewer than 3). Consider any portion of a year to be a complete year. For example, a foreign trust created on July 1, 2007, would be treated on a 2009 calendar year return as having 2 preceding years (2007 and 2008). In this case, you would calculate the amount on line 35 by dividing line 34 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 31 is not an accumulation distribution in the current tax year.

Line 36. 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 37, you must also complete line 38 and *Schedule C — Calculation of Interest Charge*, 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 30,
- You attach a copy of the Foreign Nongrantor Trust Beneficiary Statement to this return, and
- You have never before used Schedule A for this foreign trust or this foreign trust terminated during the tax year.

Line 40a. Enter on line 40a 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. Report this amount on the appropriate schedule of your tax return (e.g., Schedule E (Form 1040), Part III).

Lines 42a through 42d. Enter on these lines the applicable amounts received by you from the foreign trust that are treated as capital gain income of the trust in the current tax year. Report these amounts on the appropriate schedule of your tax return (e.g., Schedule D (Form 1040)).

Line 45. Enter the foreign trust’s aggregate undistributed net income (UNI). For example, assume that a trust was created in 2003 and has made no distributions prior to 2009. Assume the trust’s ordinary income was \$0 in 2008, \$60 in 2007, \$124 in 2006, \$87 in 2005, \$54 in 2004, and \$25 in 2003. Thus, for 2009, the trust’s UNI would be \$350. If the trust earned \$100 and distributed \$200 during 2009 (so that \$100 was distributed from accumulated earnings), the trust’s 2010 aggregate UNI would be \$250 (\$350 + \$100 - \$200).

Line 46. 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 45, the trust’s weighted UNI in 2009 would be \$1,260, calculated as follows:

Year	No. of years since that year	UNI from each year	Weighted UNI
2008	1	\$ 0	\$ 0
2007	2	60	120
2006	3	124	372
2005	4	87	348
2004	5	54	270
2003	6	25	150
TOTAL		\$350	\$1,260

To calculate the trust’s weighted UNI for the following year (2010), the trust could update this calculation, or the weighted UNI shown on line 46 of the 2009 Form 3520 could simply be updated using the following steps:

1. Begin with the 2009 weighted UNI.
2. Add UNI at the beginning of 2009.
3. Add trust earnings in 2009.
4. Subtract trust distributions in 2009.

5. Subtract weighted trust accumulation distributions in 2009. (Weighted trust accumulation distributions are the trust accumulation distributions in 2009 multiplied by the applicable number of years from 2009.)

Using the example above, the trust’s 2010 weighted UNI would be \$1,150, calculated as follows.

2009 weighted UNI	\$1,260
UNI at beginning of 2009	+ 350
Trust earnings in 2009	+ 100
Trust distributions in 2009	- 200
Weighted trust accumulation distributions in 2009 (\$100 X 3.6)	- 360
2010 weighted UNI	\$1,150

Line 47. Calculate the trust’s applicable number of years by dividing line 46 by line 45. Using the examples in the instructions for lines 45 and 46, the trust’s applicable number of years would be 3.6 in 2009 (1,260/350) and 4.6 in 2010 (1,150/250).

Note. Include as many decimal places as there are digits in the UNI on line 45 (e.g., using the example in the instructions for line 45, include three decimal places).

Schedule C—Calculation of Interest Charge

Complete Schedule C if you entered an amount on line 37 or line 41a.

Line 49. Include the amount from line 48 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 49 the tax from line 28 of Form 4970, Tax on Accumulation Distribution of Trusts.

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

Line 51. Interest accumulates on the tax (line 49) for the period beginning on the date that is the applicable number of years (as rounded on line 50) 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 tax year for which reporting is made (e.g., in the case of a 2009 calendar year taxpayer, the applicable date would be June 30, 2009). Alternatively, if you received only a single distribution during the tax 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 underpayments of tax under section 6621(a)(2). This compounded interest for periods after 1995 is imposed not only on the tax, but also on the total simple interest attributable to pre-1996 periods.

If you are a 2009 calendar year taxpayer and you use June 30, 2009, as the applicable date for calculating interest, use the table on page 9 to determine the combined interest rate and enter it on line 51. If you are not a 2009 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 51.

Table of 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 50. Read across to find the combined interest rate to enter on line 51. Use this table only if you are a 2009 calendar year taxpayer and are using June 30, 2009, as the applicable date.

Applicable number of years of trust (from line 50)	Combined interest rate (enter on line 51)
1	0.0512
1.5	0.0857
2	0.1304
2.5	0.1762
3	0.2246
3.5	0.2678
4	0.3100
4.5	0.3463
5	0.3771
5.5	0.4082
6	0.4405
6.5	0.4767
7	0.5221
7.5	0.5680
8	0.6243
8.5	0.6942
9	0.7726
9.5	0.8492
10	0.9252
10.5	0.9982
11	1.0804
11.5	1.1700
12	1.2707
12.5	1.3743
13	1.4842
13.5	1.5914
14	1.6692
14.5	1.7469
15	1.8246
15.5	1.9024
16	1.9801
16.5	2.0579
17	2.1356
17.5	2.2134
18	2.2911
18.5	2.3688
19	2.4466
19.5	2.5243
20	2.6021
20.5	2.6798
21	2.7576
21.5	2.8353
22	2.9130
22.5	2.9908
23	3.0685
23.5	3.1463
24	3.2240
24.5	3.3018
25	3.3795
25.5	3.4572
26	3.5350
26.5	3.6127
27	3.6905
27.5	3.7682
28	3.8459
28.5	3.9237

29	4.0014
29.5	4.0792
30	4.1569
30.5	4.2347
31	4.3124
31.5	4.3901
32	4.4679
All Years Greater than 32	4.5456

(Note. Interest charges began in 1977.)

Line 53. 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 as part of the total for line 60 of your 2009 Form 1040 and enter "ADT" to the left of the line 60 entry space).

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

Note. Penalties may be imposed for failure to report gifts that should be reported. See *Penalties* on page 2.

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 must 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. beneficiaries are not reportable by those beneficiaries in Part IV 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 contribution to the trust from a foreign person as a gift in 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 in Part IV.

Line 54. 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 (see definition of related person on page 4) or one is acting as a nominee or intermediary 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.

If you answered "Yes" to the question on line 54 and none of the gifts or bequests received exceeds \$5,000, do not complete columns (a) through (c) of line 54. Instead, enter in column (b) of the first line: "No gifts or bequests exceed \$5,000."

Note. Include gifts or bequests from a "covered expatriate" (as defined in section 877A(g)(1)) when calculating the \$100,000 threshold amount.

Line 55. Answer "Yes" if you received aggregate amounts in excess of \$14,139 during the current tax year that you treated as gifts from foreign corporations or foreign partnerships (or any foreign 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 2009, received \$8,000 from foreign corporation X that you treated as a gift, and \$10,000 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 56. If you answered “Yes” to the question on line 56 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.

Line 57. Answer “Yes” if, during the current tax year, you received a covered gift or bequest (as defined in section 2801(e)) of more than \$13,000 from a “covered expatriate” (as defined in section 877A(g)(1)).

Note. If you answer “Yes” to the question on line 57, complete and file Form 708. At the time these instructions went to print, the IRS was still developing Form 708. When available, this form will be posted at www.irs.gov. Your filing and tax payment obligations with respect to any section 2801 tax liability will not be due until the date to be indicated on the Form 708 or in the related instructions, once they have been issued. See Announcement 2009-57, 2009-29 I.R.B. 158, for additional information.

Privacy Act 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.

Our authority to ask for information is sections 6001, 6011, and 6012(a) and their regulations, which require you to file a return or statement with us for any tax for which you are liable. Your response is mandatory under these sections. Section 6109 requires filers and return preparers to provide their identification numbers. This is so we know who you are, and can process your return and other papers. You must fill in all parts of the tax form that apply to you.

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. 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, and U.S. commonwealths or possessions 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. Failure to provide this information, or providing false information, may subject you to fines or penalties.

Please keep this notice with your records. It may help you if we ask you for other information. If you have any questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

The time needed to complete and file this form and related schedules will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping	42 hr., 48 min.
Learning about the law or the form	4 hr., 50 min.
Preparing the form	6 hr., 40 min.
Sending the form to the IRS	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. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this office. Instead, see *When and Where To File* on page 2.
