

Supporting Statement
Internal Revenue Service
(Notice 97-34)
Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts
OMB #1545-1538

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Small Business Job Protection Act ("Act") of 1996 added several new reporting requirements with respect to transfers to, and distributions from, foreign trusts and the receipt of large gifts from foreign persons. The Act also requires a U.S. owner of a foreign trust to ensure that the trust file an annual return and annually furnish information as the Secretary prescribes to U.S. owners and U.S. beneficiaries of the trust. See 26 USC sections 6048 and 6039F. The new statutory provisions generally give the Secretary broad discretion to prescribe the time and manner for the required reporting. The Act also extensively revises 26 USC section 6677 by increasing penalties for failure to comply with section 6048. Notice 97-34 provides substantial guidance on the time and manner for reporting these transactions, as well as other interpretative guidance on the scope of these provisions.

Section I of the notice announces that the Service is revising Forms 3520, titled "Creation of or Transfers of Certain Foreign Trusts," and 3520-A, "Annual Return of Foreign Trust with U. S. Beneficiaries" at the time, in a manner that will generally allow a U.S. person, or a foreign trust owned by a U.S. person, to comply with all of the new reporting requirements by using these forms.

Note: Form 3520 and 3520A are currently approved under OMB Control Number 1545-0159.

Section III (previously labeled Section II) provides that U.S. persons that make gratuitous transfers to a foreign trust must report that transfer on Form 3520. Certain qualified obligations must also be reported on Form 3520 as well as certain transfers to foreign trusts that are required to be reported under 26 USC section 1494.

Section IV (previously labeled Section III) of the notice provides that a U.S. owner of a foreign trust must ensure that the trust files a Form 3520-A and includes a foreign grantor trust information statement with that form. The notice sets forth the information that must be included on this information statement. Section III also provides that a foreign trust that wishes to appoint a U.S. agent must enter into a binding agreement with the agent in accordance with the notice. If the agreement terminates for any reason, the foreign trust must notify the Commissioner by amending its Form 3520-A.

Section V (previously labeled Section IV) describes the information that a foreign trust must provide to its U.S. beneficiaries in order for the beneficiary to determine the proper manner in which to report distributions from that trust on Form 3520.

Section VI (previously labeled Section V) of the notice describes how to report receipt of gifts under section 6039F, the dollar thresholds for reporting such gifts, and the interaction of filing requirements under sections 6048(c) and 6039F.

Section VII explains the applicable penalties for failure to file the information requested under sections 6048 and 6039F, and Section VIII provides special transition rules.

2. USE OF DATA

The information collected pursuant to the notice will be used by the Service to monitor compliance with the provisions of the Act and to administer the tax laws relating to foreign trusts and receipt of gifts from foreign persons.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing for this collection.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The collection of information requirement will not have a significant economic impact on a substantial number of small entities at this time.

1. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Consequences of less frequent collection on federal programs or policy activities would result in taxpayers not in compliance, causing increase in duplicative reporting requirements.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collections to be inconsistent with Guidelines in 5 CFR 1320.5(d)2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

In response to the Federal Register notice (85 FR 28698), dated May 13, 2020, regarding Notice 97-34, Information Reporting on Transactions with Foreign Trusts and on Large Foreign Gifts, OMB control number 1545-1538, IRS received two comments during the comment period.

One comment requested an exception from the filing requirements under section 6048 on Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner (Under section 6048(b)), which are reviewed under OMB control number 1545-0159. Another comment did not offer a specific comment relating to Notice 97-34 because the author of the comment was unclear as to whether Notice 97-34 actually involves a collection of information given the existence of the Forms 3520 and 3520-A, which have their own collection of information burden reflected under OMB control number 1545-0159.

A collection of information under the Paperwork Reduction Act of 1995 is any reporting, recordkeeping, or disclosure requirements imposed on ten or more persons. Although most of the collection of information burden contained in Notice 97-34 is now reflected in the collection of information burdens for Forms 3520 and 3520-A, section V of Notice 97-34 describes one requirement that is not contained in Forms 3520 and 3520-A. This collection of information is the Foreign Nongrantor Trust Beneficiary Statement that foreign nongrantor trusts may provide to its U.S. beneficiaries, which the U.S. beneficiaries must attach to their Form 3520 and use to determine the U.S. income tax consequences from the receipt of trust distributions. Accordingly, the comments received are outside the scope of the request for comments in the notice and were not considered.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift will be provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section III provides that gratuitous transfers, certain qualified obligations, and certain transfers reportable under section 1494 must be reported on Form 3520. Section 1494 was repealed in 1997. The remaining reporting requirements are now incorporated into Form 3520 and the burden relating to these reporting requirements is included in the burden for Form 3520.

Section IV provides that a foreign trust with a U.S. owner must annually file Form 3520-A and attach a Foreign Grantor Trust Information Statement to the form. The trust must also send a Foreign Grantor Trust Owner statement to each U.S. owner of a portion of the trust and a Foreign Grantor Trust Beneficiary Statement to certain U.S. beneficiaries. These reporting requirements are now incorporated into Form 3520-A, and therefore the burden related to completing these statements (6,000 hours) is now included in the burden for Form 3520-A.

Section IV also provides procedures and instructions for entering into a binding agreement to appoint a U.S. agent. The procedures and instructions for entering into such an agreement are now contained in the instructions to Form 3520-A, and thus, the burden related to these procedures (1,250 hours) is now reflected in the burden for Form 3520-A.

Section V describes information that a foreign nongrantor trust must provide a U.S. beneficiary in order for the beneficiary to determine the proper manner in which to report distributions from the trust on Form 3520. IRS estimate that 5000 trusts will spend .75 hours to complete these statements, called a Foreign Nongrantor Trust Beneficiary Statement.

The total burden for this requirement is 3,750 hours.

Notice	Trusts/ Responses	Time/per response	Total Burden hours
Notice 97-34	5,000	.75 hrs.	3,750

Section VI requires U.S. persons to report certain large foreign gifts in any taxable year on Form 3520. The reporting of this information is now incorporated in Form 3520 and the burden is reflected in the burden of Form 3520.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COSTS TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. IRS is making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical, analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the notice sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.