



February 13, 2023

Mr. Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Ave, NW,
Washington, DC 20224
pra.comments@irs.gov

RE: Response to Request for Public Comments 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 (OMB Number: 1545–0159)

Dear Mr. Garcia:

The American Institute of CPAs (AICPA) is submitting comments to the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) in response to the [request for public comments](#) published in the Federal Register on December 16, 2022 concerning 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, (OMB Number: 1545–0159).

Our comments cover the following issues:

- Burden estimate is materially understated;
- Enhancements to quality, utility, and clarity are possible; and
- Broader issues.

Our recommendations are:

- IRS should utilize actual filing data from the most recent tax year available to provide more accurate burden estimates.
- IRS should create a safe harbor for late filing of Forms 3520 and 3520-A, including providing relief similar to First Time Abate for Forms 3520 and 3520-A and providing more reasonable cause exceptions to the imposition of penalties (and reviewing and considering reasonable cause statements filed with returns prior to sending out penalty notices).
- IRS should create a separate form for reporting large foreign gifts and inheritances along with instructions that clearly educate the public.

- IRS should add a checkbox to Form 1040 asking taxpayers whether they received any gifts and inheritances from sources outside of the United States. If the answer is yes, then direct taxpayers to the appropriate form and instructions. This suggestion is similar to the Schedule B question concerning foreign bank accounts.
- IRS should cross-reference actual reporting thresholds in its Form 1040 instructions, summarize changes to the Form 3520 and Form 3520-A and instructions in the “What’s New” section of form instructions (as done for the [instructions to the Form 5471](#), Information Return of U.S. Persons With Respect To Certain Foreign Corporations), and do more to educate the public and tax professionals about the reporting requirements and penalties associated with large foreign gifts and inheritances on Form 3520. For example, IRS should clarify on the IRS [international taxpayers website](#) that Form 3520 and Form 3520-A (and other international information reporting requirements) also apply to U.S. individuals living in the U.S. if they have foreign assets and transactions and provide links to potential returns that may be required.
- IRS should make clear to the public and tax professionals that the IRS is currently assessing maximum penalties for late and amended Forms 3520 relating to reporting foreign gifts and inheritances.
- IRS should enhance the quality, utility, and clarity of the information to be collected on the Form 3520 and Form 3520-A, including make clear in the instructions to the Form 3520 when an employer identification number (EIN) is required. For example, IRS should clarify whether a foreign non-grantor trust needs to obtain an EIN if it has U.S. beneficiaries but otherwise does not derive any U.S. source income or have any connections to the United States. Such a trust was recently issued an EIN by the IRS, without a request.
- IRS should provide that the U.S. agent form only needs to be attached to Form 3520 and Form 3520-A every three years unless there has been a change.
- IRS should allow e-filing of the Form 3520 and Form 3520-A, which could reduce the number of returns incorrectly being assessed late filing penalties.
- IRS should provide more guidance on the issues of foreign trust reporting for foreign pensions.
- IRS should provide broader administrative relief from reporting than set forth in Rev. Proc. 2020-17.
- IRS should raise the thresholds in Rev. Proc. 2020-17 § 5.03(4) to an annual limit of \$200,000 or less and a lifetime limit of \$3,000,000 or less. The current limits in Rev. Proc. 2020-17 exclude too many taxpayers from the relief provided.
- IRS should include an exemption from Form 3520 and Form 3520-A reporting for foreign pensions where deferral of tax on earnings is available under a tax treaty, as in the case of Form

8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund. See Treas. Reg. § 1.1298-1(c)(4).

Specific Comments

Overview

The request for public comments concerning Form 3520 and Form 3520-A invites public comments on the following:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- (b) The accuracy of the agency's estimate of the burden of the collection of information;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start-up costs and costs of operation.,

Our comments address two categories mentioned in the request for public comment: (1) the accuracy of the agency's estimate of the burden of the collection of information; and (2) ways to enhance the quality, utility, and clarity of the information to be collected. In addition, we provide additional broader recommendations relating to Form 3520 and Form 3520-A and administrative relief from reporting under [Rev. Proc. 2020-17](#).

Burden Estimate is Materially Understated

Recommendation

IRS should utilize actual filing data from the most recent tax year available to provide more accurate burden estimates.

Analysis

Concerning the agency's burden estimate, the IRS provides in the Federal Register filing an estimate of only 1,820 respondents filing Form 3520 and Form 3520-A.¹

We think the IRS estimate in the Federal Register of only 1,820 respondents completing the Form 3520 or Form 3520-A is materially understated and contradicts publicly available data. For instance, historical data shows 27,431 Forms 3520 were filed in 2012.²

¹ See Proposed Collection; Comment Request for Forms 3520 and 3520-A, filed in the Federal Register, [FR Doc. 2022-27246](#), 12/15/22.

² See TIGTA report "[A Service-Wide Strategy Is Needed to Increase Business Tax Return Electronic Filing](#)," OIG report 2014-40-084, September 24, 2014.

In addition, over the last decade, awareness of Form 3520 and Form 3520-A has grown significantly. A decade after the above mentioned 2012 statistics, the actual number of annual filers (respondents) of Form 3520 likely exceeds double the 2012 amount, or about 50,000 Forms 3520 and 17,000 Forms 3520-A.³ By materially understating the number of respondents, the IRS is materially understating the overall compliance burden associated with these forms. We request that the IRS utilize actual filing data from the most recent tax year available to provide more accurate burden estimates.

Enhancements to Quality, Utility, and Clarity are Possible

Recommendations

We suggest the following recommendations:

- IRS should create a safe harbor for late filing of Forms 3520 and 3520-A, including providing relief similar to First Time Abate for Forms 3520 and 3520-A and providing more reasonable cause exceptions to the imposition of penalties (and reviewing and considering reasonable cause statements filed with returns prior to sending out penalty notices).
- IRS should create a separate form for reporting large foreign gifts and inheritances along with instructions that clearly educate the public.⁴
- IRS should add a checkbox to Form 1040 asking taxpayers whether they received any gifts and inheritances from sources outside of the United States. If the answer is yes, then direct taxpayers to the appropriate form and instructions. This suggestion is similar to the Schedule B question concerning foreign bank accounts and foreign trust distributions.
- IRS should cross-reference actual reporting thresholds in its Form 1040 instructions, summarize changes to the Forms 3520 and 3520-A and instructions in the “What’s New” section of form instructions (as done for the [instructions to the Form 5471](#), Information Return of U.S. Persons With Respect To Certain Foreign Corporations), and do more to educate the public and tax professionals about the reporting requirements and penalties associated with large foreign gifts and inheritances on Form 3520. For example, IRS should clarify on the IRS [international taxpayers website](#) that Form 3520 and Form 3520-A (and other international

³ These estimates are based on information about IRS filings from 2017, 2018, and 2019. Note that prior IRS Statistics of Income (SOI) “[Foreign Trusts](#), 2006,” states “From 1990 through 2006, the number of Form 3520 returns filed reporting foreign “grantor” and “nongrantor” trust transactions and certain foreign gifts rose from 133 to 7,956 (almost 5,900 percent), while the number of Form 3520-A foreign “grantor” trust returns filed rose from 291 to 3,819 (over 1,200 percent) (Figure A).”

⁴ See AICPA prior comments that includes an AICPA letter and AICPA draft Form 1041NR, U.S. Income Tax Return for Foreign Estates and Trusts, and relevant schedules, for consideration by the IRS (including: [AICPA Letter](#) and AICPA proposed: [Draft Form 1041NR](#), [Draft Form 1041NR - page 6](#), [Draft Form 1041NR - page 7](#), [Draft Form 1041NR-T](#), [Draft Schedule D](#), [Draft Schedule K-1](#), [Draft Schedule K-1 - page 9](#), [Draft Form 4970FT](#), and [Draft Schedule J](#)), September 22, 2008.

information reporting requirements) also apply to U.S. individuals living in the U.S. if they have foreign assets and transactions and provide links to potential returns that may be required.

- IRS should make clear to the public and tax professionals that the IRS is currently assessing maximum penalties for late and amended Forms 3520 relating to reporting foreign gifts and inheritances.
- IRS should enhance the quality, utility, and clarity of the information to be collected on the Form 3520 and Form 3520-A, including make clear in the instructions to the Form 3520 when an employer identification number (EIN) is required. For example, IRS should clarify whether a foreign non-grantor trust needs to obtain an EIN if it has U.S. beneficiaries but otherwise does not derive any U.S. source income or have any connections to the United States. Such a trust was recently issued an EIN by the IRS, without a request.
- IRS should provide that the U.S. agent form only needs to be attached to Form 3520 and Form 3520-A every three years unless there has been a change.

Analysis

The significant percentage of value-based penalties applicable to failures to timely report the receipt of gifts and inheritances from foreign persons make clear the importance and impact of this issue on taxpayers and tax professionals and to the IRS. However, the only reference to the information reporting requirement in the [instructions to the 2022 Form 1040](#), U.S. Individual Income Tax Return, is buried on page 87, where there is a small mention of foreign gift and inheritance reporting. In addition to mentioning the \$17,339 amount for gifts from foreign corporations or foreign partnerships, it should also mention the \$100,000 amount for gifts and inheritances from foreign individuals. IRS provides considerably more information in [Notice 97-34](#) versus the information in the 2022 Form 1040 instructions.

The IRS' silence and lack of transparency on its practice of assessing systemic penalties at maximum rates all the while advertising the Delinquent International Information Return Procedures does not reflect the IRS' commitment to transparency.

In addition, the Ogden Campus' policy of assessing maximum penalties for late and amended Forms 3520 and 3520-A without regard to the underlying facts, including reasonable cause, is not only creating a strong disincentive for voluntary compliance, but it is also creating a strong disincentive for tax professionals to handle compliance matters relating to Forms 3520 and 3520-A. The strong disincentive for voluntary compliance is obvious; simply assessing maximum penalties without regard to the facts is prompting many taxpayers to elect prospective compliance rather than self-correcting past mistakes. The IRS may not be aware of the strong disincentive for tax professionals to handle compliance matters relating to Forms 3520 and 3520-A. Some tax professionals are no longer preparing Forms 3520 and 3520-A because of the IRS' strict liability for any and all perceived mistakes, foot faults, and errors. The IRS's current practice of systemically assessing maximum penalties regardless of underlying facts creates too much risk for tax professionals. And in many cases involving penalties assessed by the Ogden Campus, penalties

can easily exceed malpractice insurance coverage. This is driving some CPA firms to eliminate handling Forms 3520 and 3520-A as part of their tax practices.

Broader Issues

Recommendations

We suggest the below recommendations:

- IRS should allow e-filing of the Form 3520 and Form 3520-A, which could reduce the number of returns incorrectly being assessed late filing penalties.
- IRS should provide more guidance on foreign trust reporting for foreign pensions.
- IRS should provide broader administrative relief from reporting than set forth in Rev. Proc. 2020-17.
- IRS should raise the thresholds in Rev. Proc. 2020-17 § 5.03(4) to an annual limit of \$200,000 or less and a lifetime limit of \$3,000,000 or less.⁵
- IRS should include the exemption from Form 3520 and Form 3520-A reporting for foreign pensions where deferral of tax on earnings is available under a tax treaty, as in the case of Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund. See Treas. Reg. § 1.1298-1(c)(4).

Analysis

We praise the IRS for the administrative relief from reporting under Rev. Proc. 2020-17. However, the current limits in Rev. Proc. 2020-17 exclude too many taxpayers from the relief provided. We also note the lack of guidance from the IRS relating to reporting foreign pensions potentially as foreign trusts. The requirements are ambiguous as to when foreign pensions are reportable as foreign trusts. This issue is especially true with broad-based and personal pension contracts established in civil law jurisdictions where the common law concept of trusts is not widely understood or utilized.

The AICPA is the world's largest member association representing the CPA profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to

⁵ See prior AICPA comment letter "[AICPA Comments on Foreign Gift Reporting Threshold](#)," dated March 3, 2008,

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individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Hank Alden, Chair, AICPA Foreign Trust Form 3520 Task Force, at (410) 571-0388 or halden@eightax.com, or Irene Estrada, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (703) 628-5243 or irene.c.estrada@pwc.com; Eileen Sherr, AICPA Director — Tax Policy & Advocacy, at (202) 434-9256 or Eileen.Sherr@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,



Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
Mr. William M. Paul, Principal Deputy Chief Counsel, Internal Revenue Service
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