



GMS Flash Alert

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United States – IRS Issues Foreign Trusts and Gifts Reporting Rules

On May 7, 2024, the U.S. Treasury and Internal Revenue Service (IRS) released proposed regulations that would provide guidance regarding information reporting on transactions with foreign trusts and receipt of large foreign gifts and regarding loans from, and uses of property of, foreign trusts. The proposed regulations would also amend the existing regulations relating to foreign trusts having one or more U.S. beneficiaries.¹ This *GMS Flash Alert* provides an overview of the proposed regulations most relevant to international assignees.

WHY THIS MATTERS

It is very common for assignees to participate, or have an interest, in a retirement or savings arrangement in a foreign country that is classified as a foreign trust for U.S. purposes. This classification generally means that the assignee will have to comply with onerous foreign trust information reporting requirements, which are administratively burdensome and increase U.S. tax compliance costs.

It is also very common for assignees to receive gifts or bequests from individuals in their home country (often from family members). Gifts and bequests from a foreign person over US\$100,000 in the aggregate are generally reportable.

Failure to comply with these reporting requirements may subject an assignee to significant penalties.

These proposed regulations expand upon the relief from these onerous reporting requirements provided in Revenue Procedure 2020-17 ([GMS Flash Alert 2020-044 United States – IRS Announces Relief for Reporting of Certain Foreign Trusts](#) (March 3, 2020)). Additionally, they provide a reporting exception for “treaty tie-breaker” or “dual resident” taxpayers.

With this expanded relief, more assignees and foreign trusts should qualify for an exemption from these information reporting requirements.

Background

The proposed regulations would provide guidance under U.S. Internal Revenue Code sections 643(i), 679, 6039F, 6048, and 6677 regarding information reporting on transactions with foreign trusts and receipt of large foreign gifts and regarding loans from, and uses of property of, foreign trusts. They would also amend the existing regulations relating to foreign trusts having one or more U.S. beneficiaries. These proposed regulations generally implement rules previously set forth in Notice 97-34, Revenue Procedure 2014-55, and Revenue Procedure 2020-17, with certain additions and other modifications.

The proposed regulations are proposed to apply to transactions with foreign trusts and the receipt of foreign gifts in tax years beginning after the date on which the final regulations are published in the *Federal Register*. However, a taxpayer may rely on the proposed regulations for any tax year ending after the date the proposed regulations are published in the *Federal Register* (which is scheduled to be May 8, 2024) and beginning on or before the date that final regulations are published in the *Federal Register*, provided that the taxpayer and all related persons (within the meaning of sections 267(b) and 707(b)(1)) apply the proposed regulations in their entirety and in a consistent manner for all tax years beginning with the first taxable year of reliance until the applicability date of the final regulations.

U.S. Person

The proposed regulations provide special rules for a “dual resident taxpayer.” A dual resident taxpayer is a foreign national who is considered a resident of the United States pursuant to its domestic laws and also a resident of a treaty country pursuant to the treaty partner’s domestic laws, but invokes the “tie-breaker” provision of the treaty so as to be treated as a nonresident alien for U.S. income tax purposes.

Although dual resident taxpayers are generally treated as nonresident aliens for purposes of computing their U.S. income tax liability, they may be treated as U.S. persons for certain international information reporting requirements (such as 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 the proposed regulations, dual resident taxpayers are generally not treated as U.S. persons for any portion of the year in which they are treated as nonresident aliens for purposes of computing their U.S. income tax liability.

Foreign Gifts

Presently, the foreign gift reporting threshold is US\$100,000. This amount is not indexed for inflation, with the result that, as inflation rises, more gifts and bequests from foreign persons are reportable on Form 3520.

Under the proposed regulations, the \$100,000 reporting threshold would be indexed for inflation.

Relief for Reporting Certain Foreign Trusts

The proposed regulations generally implement and expand upon the relief provided in Revenue Procedure 2020-17, which provides selected U.S. citizens and residents an exemption from Form 3520 and Form 3520-A reporting for qualified foreign trusts. ([GMS Flash Alert 2020-044 United States – IRS Announces Relief for Reporting of Certain Foreign Trusts](#) (March 3, 2020) provides an overview of the relief provided in Revenue Procedure 2020-17.)

Tax-Favored Foreign Retirement Trust

Under Revenue Procedure 2020-17, a foreign trust is a “tax-favored foreign retirement trust” exempt from reporting if it meets certain conditions. One of the conditions is that a trust may only permit contributions with respect to income earned from the performance of personal services. This condition has the result that a trust that allowed unemployed individuals to contribute (a common feature) would not qualify for this exception.

The proposed regulations modify this condition to allow for limited contributions made by unemployed individuals.

Revenue Procedure 2020-17 also imposes a contribution limit whereby contributions to the trust must either be limited by a percentage of earned income, an annual limit of US\$50,000, or a lifetime limit of US\$1 million. This limit is not indexed for inflation.

The proposed regulations modify this requirement by requiring that a trust meet either a new value threshold (aggregate value of the trust is limited to no more than US\$600,000 during the taxable year, as adjusted for inflation) or a contribution limit (contributions to the trust must either be limited by a percentage of earned income, an annual limit of US\$75,000, or a lifetime limit of US\$1 million, as adjusted for inflation).

Tax-Favored Foreign Non-Retirement Trust

The proposed regulations generally adopt the definition of “tax-favored foreign non-retirement trust” provided in Revenue Procedure 2020-17. However, the contribution limits (annual limit of \$10,000 or lifetime limit of \$200,000) are now indexed for inflation.

Tax-Favored De Minimis Savings Trust

The proposed regulations expand the definition of an “applicable tax-favored foreign trust” that is exempt from reporting to include a “tax-favored de minimis savings trust.” This type of trust includes a foreign trust that is created, organized, or otherwise established under the laws of a foreign jurisdiction as a trust, plan, fund, scheme, or other arrangement to operate as a savings vehicle, that is not a “tax-favored foreign retirement trust” or a “tax-favored foreign non-retirement trust.” To qualify as a “tax favored de minimis savings trust, the trust must meet certain conditions:

- (i) The trust is generally exempt from income tax or otherwise tax-favored under the laws of the trust’s jurisdiction;
- (ii) Annual information reporting with respect to the trust is provided or available to relevant tax authorities in the trust’s jurisdiction; and
- (iii) The aggregate value of the trust is limited to no more than US\$50,000 at any point during the tax year, as adjusted for inflation.

KPMG INSIGHTS

The relief provided in the Revenue Procedure 2020-17 was in practice fairly limited, as few foreign trusts satisfy the strict conditions. Additionally, as the contribution limits were not indexed for inflation, certain trusts that qualified in one tax year would not qualify in another tax year. The modifications included in the proposed regulations should result in more foreign trusts satisfying these conditions and more assignees qualifying for relief.

FOOTNOTE:

1 [REG-124850-08](#).

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