Foreign Gifts and Foreign Trusts: Taxpayers Still Seeking Court Guidance After Two Government Concessions

By Hale E. Sheppard*

I. Introduction

Taxpayers with international reach understand that U.S. international tax compliance can be complicated. Each aspect has its own challenges and peculiarities, but issues related to foreign gifts and foreign trusts can be especially tricky. Why? The duties are obscure, the rules are laden with complex concepts and terminology, and guidance on some key issues is absent. Exacerbating matters, the Internal Revenue Service ("IRS") immediately assesses and starts collecting penalties when violations occur, it has been conducting a Compliance Campaign for years, it refuses to employ the first-time-abate policy, and it issued administrative relief that was out of reach for many taxpayers.

Taxpayers and practitioners have been seeking clarity on critical foreign gift and trust issues, from the courts, for a long time. This has not occurred, largely because the government conceded relevant cases before litigation takes place. Such pre-trial surrender by the government is positive for the one taxpayer involved in the dispute, but negative for others who desire broader guidance, strong rulings, judicial precedent on which *all* taxpayers can rely.

This article, which builds upon several earlier ones, compares the main obligations stemming from foreign gifts and trusts, identifies several recent events in these areas, and analyzes two new cases in which key issues pertinent to many taxpayers were raised, but not resolved.[1]

II. Comparing Foreign Gift and Trust Rules

Readers must start with some fundamentals about duties triggered by receiving gifts from foreign persons and having certain connections with foreign trusts.

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A. Receipt of Foreign Gifts

If a U.S. individual receives a gift from an individual who is not a U.S. person totaling more than $100,000 during a given year, then he generally must file a Form 3520 (*Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*) with the IRS providing data about the event.[2] The receipt of the foreign gift does *not* cause immediate U.S. income taxes for the recipient, solely an information-reporting duty.

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It is noteworthy that Form 1040 (*U.S. Individual Income Tax Return*), which all U.S. individuals ordinarily must file with the IRS, does not raise the potential need to submit Form 3520 upon receipt of a foreign gift. Schedule B to Form 1040 expressly warns individual taxpayers that they might have to file Form 3520 if they get a distribution from, transfer anything to, or serve as a grantor of a foreign trust. It makes no mention, however, of possible Form 3520 duties in situations where U.S. individuals receive foreign gifts.[3]

The penalty for filing a delinquent Form 3520 is five percent of the unreported gift for each month it is late, with a maximum penalty of 25 percent.[4]

B. Links to Foreign Trusts

A taxpayer's obligations vary depending on his relationship to the foreign trust. In particular, expectations differ based on whether a taxpayer is a "responsible party," an "owner," and/or the recipient of a "distribution."

A "responsible party" generally must file Form 3520 within 90 days of certain events.[5] For these purposes, a "responsible party" is the grantor, the executor of a decedent's estate, or the transferor of property, depending on the circumstances.[6] If a U.S. person is treated as the "owner" of any portion of a foreign trust under the grantor trust rules, he essentially has two mandates. He must file Form 3520, and he "shall be responsible to ensure" that the trust files Form 3520-A and furnishes all required information to each U.S. person who is an owner of, or who receives a distribution from, the trust.[7] Finally, a U.S. person ordinarily must file Form 3520 if he receives during the year any distribution from a foreign trust, as this concept is broadly interpreted.[8]

The penalty for not filing a timely, complete, accurate Form 3520 is $10,000 or 35 percent of the so-called "gross reportable amount," whichever is larger.[9] If the violation involves Form 3520-A (pertaining to owners of foreign trusts) instead of Form 3520 (pertaining to responsible parties and beneficiaries), the penalty decreases from 35 percent to five percent.[10]

C. Potential Penalty Mitigation

The IRS will not assert penalties where there is "reasonable cause" for a violation, and it was not due to "willful neglect."[11] Because the IRS has never issued regulations explaining the definition of reasonable cause specifically in the context of Forms 3520 and 3520-A, the courts have been receptive to arguments applying standards found elsewhere in the Internal Revenue Code.[12] Here are a couple of common ones.

First, a taxpayer's ignorance of the law might give rise to reasonable cause. The IRS acknowledges that in some instances taxpayers may not be aware of specific obligations to file returns and/or pay taxes.[13] It further concedes that reasonable cause "may be established if the taxpayer shows ignorance of the law in conjunction with other facts and circumstances," such as whether the taxpayer has been penalized before and the level of complexity of the issue.[14] The IRS also recognizes that a taxpayer may have reasonable cause if he was unaware of a requirement and could not reasonably be expected to know about it.[15]

Second, a taxpayer's reasonable reliance on an independent, informed, qualified tax professional often constitutes reasonable cause.[16] For purposes of the reasonable-reliance defense, the concept of "advice" broadly covers "any communication" from an advisor, and it "does not have to be in any particular form."[17] The Supreme Court has mandated that the IRS liberally construe this defense in favor of taxpayers.[18] The Tax Court, for its part, has held that reasonable reliance exists where three elements are present: the advisor was a competent professional with sufficient expertise, the taxpayer provided the advisor with necessary and accurate information in a timely manner, and the taxpayer actually relied in good faith on the advisor's advice.[19]

D. Procedural Peculiarities

Unlike the long list of penalties that are linked to tax returns, Form 3520 and Form 3520-A penalties are "assessable" ones. This means that the IRS immediately imposes them and starts collection actions when infractions occur; the normal deficiency procedures do not govern.[20]

III. Recent Events

Several things have occurred recently concerning foreign gifts and trusts. Some noteworthy ones are described below.

A. Compliance Campaign

The IRS launched a "Compliance Campaign" in 2018 centered on foreign trusts, Form 3520, and Form 3520-A.[21] This enforcement effort was designed to stop alleged shenanigans associated with foreign trusts, but taxpayers with legitimate reasons for establishing foreign trusts and those receiving foreign gifts got caught in the IRS' enforcement net, too.

B. No Abatements for Initial Errors

Problems have existed for many years as a result of immediately assessing penalties, failing to consider legitimate "reasonable cause" positions, ignoring collection freezes, not applying the first-time abate policy, *etc.*[22] As a partial concession, the IRS issued a memo to Appeals Officers in late 2022 indicating that they can waive penalties using the first-time abate policy when it comes to some international information returns.[23] Regrettably, the memo stated that such a policy is *not* applicable to foreign gift or trust situations.[24]

C. Narrow Administrative Salvation

The IRS, cognizant of compliance burdens and administrative headaches, announced a partial solution in the form of Rev. Proc. 2020-17.[25] Its primary purpose was to create an exemption from certain information-reporting requirements for U.S. individuals with respect to their ownership of, and transactions with, particular foreign trusts.[26] Rev. Proc. 2020-17 offered *prospective* benefits in that eligible individuals are excused from filing Forms 3520 and 3520-A for qualified foreign trusts in the future.[27] It also contained *retroactive* benefits in that eligible individuals against whom the IRS previously assessed penalties could seek an abatement or a refund, as appropriate.[28]

Rev. Proc. 2020-17 covered both "tax-favored foreign *retirement* trusts" and "tax-favored foreign *non-retirement* trusts."[29] The former meant (i) a trust, plan, fund, scheme, or other arrangements, (ii) established under the laws of a foreign country, (iii) to provide pension or retirement benefits, (iv) that meets a long list of requirements under local law, the most important of which is that contributions to the trust are limited to specific percentages or amounts, and distributions from the trust are contingent upon death, disability, or reaching a particular age.[30] The latter is largely the same, except that its objective is to provide medical, disability, or educational benefits.[31] Many taxpayers had trouble meeting these eligibility criteria.

What really matters is that taxpayers and their advisors understand the existing rules, recent events, and pending issues left unresolved by recent cases.

D. Seeking Public Input

In what one hopes is a sign that the IRS is in the process of fixing problems related to Forms 3520 and 3520-A, it sought public comments on these returns in late 2022.[32] The Texas Society of Certified Public Accountants, American Institute of Certified Public Accountants, Florida Bar Tax Section, and two tax practitioners submitted thoughts, some of which are particularly relevant to this article.[33] They suggested, for instance, that the IRS should give a "fair and meaningful reasonable cause review *before* penalties are imposed," ensure that the IRS personnel conducting such review possess the proper background and training, avoid the use of "low-level clerks" in making initial penalty determinations, and require that a supervisor approve all penalties in writing before assessing them. They further recommended that the IRS change its longstanding practice of ignoring the first-time-abate policy when it comes to foreign gift and trust penalties. They also urged the IRS to expand the number and types of justifications it accepts as "reasonable cause" for waiver of penalties. Finally, commentators asked the IRS to issue better guidance on when foreign pensions and other retirement plans constitute "foreign trusts."

E. Ongoing Ambiguity

The Government Accountability Office issued a report strongly criticizing the IRS for perpetuating a complex, obscure, and inconsistent system affecting foreign retirement plans, including those characterized as foreign trusts ("GAO Report").[34] Lack of clarity from the IRS has created disagreement among U.S. tax practitioners about how to treat foreign plans. According to the GAO Report, different practitioners advise their clients to report them in distinct manners, including as passive foreign investment companies, foreign financial accounts, foreign financial assets, or foreign trusts.[35]

It is also critical that they continue to follow future judicial battles, as they will have to address a slew of intricate tax, legal, and procedural issues at some point.

The GAO Report is reflective of recent outcomes involving a common retirement vehicle, the Australian Superannuation Fund ("ASF"). Taxpayers and practitioners have sought clarity from the IRS for many years with respect to ASFs. Among other things, they have sent letters highlighting the inconsistent tax treatment provided by the U.S. and Australian tax authorities, as well as the lack of specific direction in the U.S.-Australian treaty.[36] The IRS did not heed the call for change. Indeed, internal IRS documents show that it instructed its personnel to adopt the following positions when dealing with voluntary disclosure cases: (i) ASFs are not covered by a favorable treaty provision; (ii) the voluntary disclosure programs offered by the IRS do not have special provisions for ASFs; (iii) the highest value of ASFs that are not compliant with U.S. tax or information-reporting obligations are subject to penalties; and (iv) ASFs must be reported on various information returns, including, but not limited to, Forms 3520 and 3520-A.[37]

IV. Recent Case about Foreign Gifts—Form 3520

Wrzesinski v. United States was the first federal case dealing with Form 3520 penalties related to foreign gifts, which renders it important.[38]

The taxpayer in the case was born, raised, and educated in Poland. He immigrated to the United States when he was 19 years old. He then engaged in public service, working as a police officer for nearly a decade. In 2010, his mother, both a citizen and resident of Poland, won the lottery there and decided to gift the taxpayer $830,000.

The taxpayer called his tax advisor from Poland in 2010 to inquire about any U.S. duties triggered by his receipt of the gift. The tax advisor, who is an Enrolled Agent with the IRS, expressly told the taxpayer that the gift did not cause U.S. income tax liabilities or any other duties. The mother made the gift *via* four separate transfers, from Poland to the United States, in 2010 and 2011. Thus, the taxpayer received over $100,000 in cash gifts from a foreign person each year. In early 2011, during preparation of his Form 1040 for 2010, the taxpayer again asked his tax advisor if he needed to file anything with the IRS in connection with the gifts from his mother. The tax advisor, as before, incorrectly told the taxpayer that nothing was due.

The taxpayer did not receive any additional gifts, and the IRS never audited him. Things changed in 2018. The taxpayer wanted to do some re-gifting, sending a portion of the money that he previously received from his mother to his godson in Poland. The taxpayer thought that he, as a U.S. person, might have some tax-related duties when sending a gift abroad. Therefore, he did some searches about "foreign gifts" on the Internet. This led him to various articles about the duties of U.S. persons who receive money from, as opposed to give money to, foreign persons. Shocked, the taxpayer contacted a local attorney with experience regarding international matters.

The attorney informed the taxpayer of his duty to file Forms 3520 for 2010 and 2011 to report the cash gifts from his mother. He also explained to the taxpayer that there might be a way for him to rectify matters with the IRS on a penalty-free basis, using the voluntary disclosure program known as the Delinquent International Information Return Submission Procedure ("DIIRSP"). The taxpayer, with the assistance of the attorney, filed Forms 3520 for 2010 and 2011 pursuant to the DIIRSP, along with statements explaining why his violations were attributable to reasonable cause and should not be penalized. This occurred in August 2018. The statements contended several things, the most important of which were that the taxpayer consulted with his tax advisor before filing his Form 1040, gave the tax advisor details about the foreign gifts, received erroneous advice from the tax advisor, and relied on such advice.

After nearly a year, the IRS sent the taxpayer two notices in May 2019, indicating that he owed total penalties of $207,500 for the late Forms 3520. That figure represented the highest possible amount, which was 25 percent of the gifts received. In rejecting the DIIRSP application and accompanying statements, the IRS notices concluded that ordinary business care requires taxpayers to make themselves aware of their duties and that ignorance of tax laws was no excuse.

The taxpayer disputed the penalties of $207,500 by filing a Protest Letter in June 2019. To strengthen his position, the taxpayer later submitted a Supplemental Protest Letter, attaching a letter from the tax advisor in which he corroborated the taxpayer's reasonable-reliance defense. The tax advisor fell on his sword, so to speak, admitting that he had given the taxpayer erroneous advice about the foreign gifts.

Another year and a half passed. In late 2020, the Appeals Officer assigned to review the penalties, Protest Letter, and Supplemental Protest Letter issued a so-called Case Memo. The Appeals Officer agreed to abate $166,000 of the total penalty of $207,500. That left $41,500, or five percent of the total gifts that the taxpayer received from his mother a decade earlier.

The taxpayer paid the remaining $41,500, even though he still disagreed with the IRS. He then filed Claims for Refund, which the IRS swiftly denied. In doing so, the IRS took the position that the Claims for Refund did not establish reasonable cause and were "frivolous." The taxpayer then initiated a Suit for Refund in District Court.

The IRS quickly came under scrutiny for its handling of Form 3520 penalties in *Wrzesinski v. United States*, with commentators warning that an unfavorable decision for the IRS could open the proverbial can of worms.[39] The tax attorneys at the Department of Justice ("DOJ"), who are charged with handling refund litigation, swiftly came to the same conclusion. They agreed to fully concede the case in favor of the taxpayer *before* they even filed an Answer to the initial Complaint lodged by the taxpayer.[40] In other words, the IRS fully surrendered before it submitted any pleadings with the District Court, engaged in any discovery procedures, filed any legal briefs, or otherwise attempted to defend the IRS' earlier position that the taxpayer should be stuck with penalties.

The resolution of *Wrzesinski v. United States* was bittersweet. Many people hoped for a taxpayer victory, of course, but only *after* a trial and the issuance of a full-blown written opinion by the District Court. These events might have yielded some items helpful to *all* taxpayers with inadvertent international noncompliance. For example, the DOJ would have been forced to clarify its stance regarding what constitutes "reasonable cause" when it comes to obscure and complex returns, like Form 3520. The DOJ, moreover, would have found itself obligated to explain the standards and procedures applicable to the DIIRSP. The DOJ also might have been required to address the validity of public comments about Form 3520, such as why the first-time-abate policy is ignored when it comes to Form 3520. Because the DOJ conceded in *Wrzesinski v. United States* before the parties could fully present their positions and before the District Court could dissect them, taxpayers must await future cases for judicial guidance affecting Form 3520 and perhaps other international returns.

V. Recent Case about Foreign Trusts—Form 3520-A

Excitement was palpable when a new case involving a foreign trust and a Form 3520-A penalty came to light in mid-2023. The Amended Complaint in *Ueland v. United States* offered the following allegations.[41] The taxpayer is a U.S. citizen who has been living and working in Australia for over a decade, since 2010. He is fully compliant with his Australian tax obligations. Similarly, he files an annual Form 1040 with the IRS reporting his worldwide income, enclosing various international information returns, and paying all corresponding taxes. The taxpayer hired and relied on tax professionals to assist him in maintaining tax compliance. As an Australian resident and business owner, the taxpayer was required to participate in an ASF. The taxpayer, taking a conservative approach, treated the ASF as a foreign trust for U.S. purposes, thus triggering the need to file Forms 3520 and 3520-A.

The taxpayer filed a timely Form 1040 and a timely Form 3520 for 2017; the IRS did not question those two submissions. The ASF used a fiscal year ending on June 30, instead of a calendar year. The taxpayer sent a timely filing extension request for the Form 3520-A, purportedly moving the due date to March 15, 2019. The IRS admitted that it received the Form 3520-A three days before that.

The IRS assessed a penalty of about $96,000 on September 21, 2020. The taxpayer was unaware of any problems for 2017 until he received a letter dated

November 2, 2020, indicating that the IRS had seized the $96,000 by doing a so-called "administrative offset" from his Form 1040 for a later year, 2019. In other words, the letter informed the taxpayer that the IRS had grabbed his income tax overpayment for 2019 and used it to pay the civil penalty for 2017. The letter did not identify the tax provision under which the penalty had been assessed, the reason for the penalty, or how it was calculated.

The taxpayer, through his legal counsel, took several steps to get to the bottom of things. He called the IRS and asked questions of a representative. He then filed requests for relevant documents under the Freedom of Information Act. The next step taken by the taxpayer was filing a Form 843 (*Claim for Refund*) on December 31, 2020, which was about 14 months after he had "involuntary paid" the civil penalty thanks to the "administrative offset" conducted by the IRS.

Did the IRS recognize any shortcomings and remit the $96,000 to the taxpayer? No. Did the IRS issue an official Notice of Disallowance? Again, no. Instead, it sent the taxpayer a form letter vaguely stating that Form 843 did not "establish reasonable cause or show due diligence." The IRS further explained that the penalty did not relate to a problematic Form 3520, but rather a late Form 3520-A. The letter revealed that the IRS was ignorant of two key facts, despite being notified of them previously. First, the ASF operated under a fiscal year ending June 30, instead of a calendar year ending December 31. Second, the taxpayer filed a timely request to extend the filing deadline for Form 3520-A. The IRS, in short, thought Form 3520-A for 2017 should have arrived before March 15, 2018, while the taxpayer maintained that it was not due until March 15, 2019.

Counsel for the taxpayer sent a letter asking the Appeals Office to reconsider the refund issue, but that never occurred. The Appeals Office claimed to have "no record" of receiving it.

In light of the inaction by the Appeals Office, the taxpayer filed a Suit for Refund in federal court. This happened less than two years after the IRS sent the form letter indicating that Form 843 had not persuaded the IRS of the wrongness of its ways. The taxpayer listed various reasons why he was entitled to his money back. He argued, for instance, that the IRS failed to make a prior "notice and demand" for payment, as mandated by Code Sec. 6665(a). The taxpayer also maintained that the IRS failed to comply with Code Sec. 6751(a), which requires the IRS to give notice to the taxpayer of the name of the penalty, the tax provision under which it was imposed, and how it was computed. Additionally, he alleged that the IRS ignored Code Sec. 6751(b), pursuant to which the IRS must obtain specific supervisory approvals before assessing a penalty. Finally, the taxpayer raised the most straightforward position of all; that is, he filed Form 3520-A on time, such that delinquency penalties are wholly inapplicable.

It appears from comments to the press that the taxpayer did not argue that penalties should be abated under Rev. Proc. 2020-17 because the ASF did not meet the eligibility criteria to be considered a "tax-favored foreign retirement trust."[42] The Amended Complaint also did not contend that penalties are misplaced because the ASF should not be treated as a foreign trust for U.S. tax purposes, and the taxpayer filed Forms 3520 and 3520-A solely on a "protective" basis as a means to avoiding potential penalties.[43]

Taxpayers and tax practitioners were chomping at the bit, as they say, eager to read a court opinion addressing thorny issues centered on foreign trust reporting. Alas, it was not to be. Like the foreign gift case discussed earlier in this article, *Ueland v. United States* came to an abrupt end, without generating any helpful analysis, when the DOJ attorneys agreed to refund all $96,000 (plus interest) to the taxpayer before trial began.[44]

The documents filed with the court do not state the exact basis on which the DOJ surrendered, but statements to the press indicate that the DOJ limited itself to acknowledging that Form 3520-A was filed on time. Put another way, the DOJ did not address any of the procedural issues raised by the taxpayer in the Amended Complaint, so they remain unanswered.[45]

VI. Conclusion

Prosecutors love to tout their records, invariably announcing that their conviction rates are close to 100 percent. Well, of course they are, given that prosecutors generally have full discretion to settle *before trial* any case that might be too challenging, involve too many dicey issues, create too much uncertainty, or require too much work. Is that what has been happening recently with foreign gift and trust cases, such as the two explored in this article? The answer to that particular question is not vital. What really matters is that taxpayers and their advisors understand the existing rules, recent events, and issues left unresolved by recent cases. It is also critical that they continue to follow future judicial battles, as they will have to address a slew of intricate tax, legal, and procedural issues at some point.

ENDNOTES

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1 For earlier coverage of foreign gift and trust matters, *see* Hale E. Sheppard, *The IRS Challenges Gifts to and from Foreign Persons: Analyzing Two Recent Victories for Taxpayers*," 49, 5 INT'L TAX J. 25 (2023); Hale E. Sheppard, *IRS Concedes First Case of Form 3520 Penalties for Unreported Foreign Gifts: A Bittersweet Victory*, 179, 3 TAX NOTES FEDERAL 419 (2023); Hale E. Sheppard, *Foreign Gifts, Forms 3520, Big Penalties, and Pending Case*, 177, 1 TAX NOTES FEDERAL 57 (2022).

2 Code Sec. 6039F(a); IRS Notice 97-34, Section VI, IRB 1997-25, 22.

3 Schedule B (*Interest and Ordinary Dividends*), Part III (*Foreign Accounts and Trusts*), Question 8 (2021); 2021 Instructions for Schedule B, p. B-2; 2021 Instructions for Form 1040 and Form 1040-SR, p. 23.

4 Code Sec. 6039F(c)(1)(B); IRS Notice 97-34, Section VI, IRB 1997-25, 22.

5 Code Sec. 6048(a)(1).

6 Code Sec. 6048(a)(4). The term "reportable event" includes the establishment of a foreign trust by a U.S. person, the transfer of money or other property to a foreign trust by a U.S. person, and the death of a U.S. person if such person was treated as the "owner" of any portion of the foreign trust under the grantor trust rules or if any portion of the foreign trust was included in the person's gross estate. *See* Code Sec. 6048(a)(3)(A).

7 Code Sec. 6048(b)(1); Notice 97-34, Section IV, IRB 1997-25, 22.

8 Code Sec. 6048(c)(1); Notice 97-34, Section V, IRB 1997-25, 22.

9 Code Secs. 6677(a), 6667(c), 6048(a)–(c).

10 Code Sec. 6677(b).

11 Code Sec. 6677(d); Notice 97-34, Section VII, IRB 1997-25, 22; Code Sec. 6039F(c)(2); IRM § 20.1.9.10.5 (Jan. 29, 2021); IRM § 8.11.5.6.3 (Dec. 18, 2015).

12 *See, e.g.*, CCA 200645023 (Jun. 20, 2006); *B.C. James*, DC-FL, 2012-2 USTC ¶50,520, 100 AFTR 2d 2012-5587 (2012); *Moore*, DC-WA, 2015-2 USTC ¶50,411, 115 AFTR 2d 2015-1375 (2015); *In re Wyly, et al.*, BC-DC-TX, 2016-1 USTC ¶50,282, 552 BR 338, 117 AFTR 2d 2016-2058 (2016).

13 IRM § 20.1.1.3.2.2.6 (Nov. 25, 2011).

14 *Id.*

15 *Id.*

16 Reg. §1.6664-4(c)(1).

17 Reg. §1.6664-4(c)(2).

18 *R.W. Boyle*, SCt, 85-1 USTC ¶13,602, 469 US 241, 251, 105 SCt 687 (1985).

19 *Neonatology Associates, P.A.*, 115 TC 43, Dec. 53,970 (2000), *aff'd*, CA-3, 2002-2 USTC ¶50,550, 299 F3d 221 (2002).

20 Code Sec. 6677(e).

21 Frank Agostino *et al.*, *Examination of Large Foreign Gifts and Inheritances: Code Sec. 6039F, Notice 97-34 and Form 3520*, 20 J. TAX PRACT. PROC. 5 (2018).

22 *See, e.g.*, Kristen A. Parillo, "IRS Looking to Fix Problems with Some Automatic Assessments," Federal Tax Notes Today, Document 2019-47399 (Dec. 16, 2019); Andrew Velvarde, "Practitioners Fault Accelerated Assessable Penalty Collection," Federal Tax Notes Today, Document 2020-10055 (Mar. 28, 2020).

23 *Appeals Guidance Issued on Abatement for International Penalties*, 2022 TAX NOTES TODAY INT'L 248-23 (Dec. 7, 2022).

24 *Appeals Guidance Issued on Abatement for International Penalties*, 2022 TAX NOTES TODAY INT'L 248-23 (Dec. 7, 2022); IRM § 8.11.5.1(3) (Dec. 18, 2015); IRM § 8.11.5.1(12) (Dec. 18, 2015).

25 Rev. Proc. 2020-17; Annagabriella Colon, "IRS Guidance Eases U.S. Taxpayers' Information Reporting Duty," 2020 Tax Notes Today Federal 42-3, Document 2020-8022 (Mar. 3, 2020).

26 Rev. Proc. 2020-17, Section 1, IRB 2020-12, 539.

27 Rev. Proc. 2020-17, Section 3, IRB 2020-12, 539.

28 Rev. Proc. 2020-17, Sections 6.01 and 7, IRB 2020-12, 539.

29 Rev. Proc. 2020-17; Section 5.01, IRB 2020-12, 539.

30 Rev. Proc. 2020-17; Section 5.03, IRB 2020-12, 539.

31 Rev. Proc. 2020-17; Section 5.04, IRB 2020-12, 539.

32 Fed. Reg. Vol. 87, No. 241, p. 77167, Dec. 16, 2022.

33 *See* Texas CPAs Object to IRS's Foreign Trust Penalty Practices, 2023 TAX NOTES TODAY FEDERAL 38-41 (Feb. 24, 2023); *AICPA Requests Reforms for Foreign Trust Penalty Assessments*, 2023 TAX NOTES TODAY FEDERAL 38-42 (Feb. 13, 2023); *Changes Needed for Foreign Trust Reporting, Florida Bar Argues*, 2023 TAX NOTES TODAY FEDERAL 38-43 (Feb. 13, 2023); *Foreign Trust Transacting Reporting Must Be Improved, Firm Says*, 2023 TAX NOTES TODAY FEDERAL 38-44 (Feb. 9, 2023); Michael J.A. Karlin, *Attorney Condemns Requirement to Report Foreign Gifts*, 2023 TAX NOTES TODAY FEDERAL 45-42 (Mar. 6, 203); Andrew Velarde, *Commentators Line Up to Critique Foreign Trust Penalty Operation*, 2023 TAX NOTES TODAY FEDERAL 43-11 (Mar. 6, 2023).

34 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018); *See also* Cynthia Blum, *Migrants with Retirement Plans: The Challenge of Harmonizing Tax Rules*, 17, 1 FL. TAX REV. (2015).

35 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), pp. 38 and 39.

36 *Remedy Sought for Taxation of Retirement Funds in Australia*, 2016 TAX NOTES TODAY 178-29; Document 2016-18374 (Aug. 26, 2016); *Dual Citizen Concerned about Australian Superannuation Funds*, 2014 TAX NOTES TODAY 166-14; Document 2014-21016 (Aug. 11, 2014).

37 "IRS Releases OVDP, Streamlined Program Hotline Guide," 2017 Worldwide Tax Daily 160-16; Document 2017-66433.

38 Andrew Velarde, *Son of Polish Lottery Winner Challenges Foreign Gift Penalty*, 176 TAX NOTES FEDERAL 1777 (Sep. 12, 2022); *Wrzesinski v. United States*, District Court for the Eastern District of Pennsylvania, Complaint, Case No. 2:22-cv-03568 (Sep. 7, 2022).

39 Hale E. Sheppard, *Foreign Gifts, Forms 3520, Big Penalties, and Pending Case*, 177 TAX NOTES FEDERAL 57 (Oct. 3, 2022).

40 *Wrzesinski v. United States*, District Court for the Eastern District of Pennsylvania, Status Report in Lieu of Answer, Case No. 2:22-cv-03568 (Mar. 7, 2023); *Foreign Gift Penalties to be Refunded and Case Dismissed*, 2022 TAX NOTES TODAY 49-13 (Mar. 7, 2023); Andrew Velarde, *DOJ Concedes in Polish Lotto Foreign Gift Penalty Case*, 2023 TAX NOTES TODAY 49-5 (Mar. 14, 2023).

41 *IRS Didn't Follow Procedures When It Seized Funds, Couple Alleges*, 2023 TAX NOTES TODAY INT'L 144-16 (Jun. 23, 2023); Andrew Valverde, *Litany of IRS Failures Populates Foreign Trust Penalty Complaint*," 180 TAX NOTES FEDERAL 1036 (Aug. 7, 2023) (attaching copy of Amended Complaint).

42 Andrew Valverde, *Litany of IRS Failures Populates Foreign Trust Penalty Complaint*, 180 TAX NOTES FEDERAL 1036 (Aug. 7, 2023).

43 *See* Code Sec. 6501(c)(8).

44 Andrew Valverde, *Foreign Trust Penalty Complaint Dismissed After Stipulation*, 181 TAX NOTES FEDERAL 538 (Oct. 16, 2023); *Agreement Reached to Dismiss Foreign Trust Penalty Complaint*, 2023 TAX NOTES TODAY INT'L 196-23 (Sep. 20, 2023).

45 Andrew Valverde, *Foreign Trust Penalty Complaint Dismissed After Stipulation*, 181 TAX NOTES FEDERAL 538 (Oct. 16, 2023).