The Latest on Foreign Trusts: Enforcement Actions, Relief Measures, New Cases, Proposed Regulations, and More

*By Hale E. Sheppard**

I. Introduction

Tax issues are dynamic; things constantly evolve. This is particularly true when it comes to U.S. international tax and information-reporting duties applicable to foreign trusts. A major challenge for taxpayers is keeping up with all the changes because they derive from different sources, in different contexts, at different times. Another hurdle is that many headline-seekers, whose goal appears to be obtaining clicks at any cost, often disseminate incomplete and/or inaccurate information about important events. An additional obstacle is that even those aware of new items concerning foreign trusts have problems identifying how they interact. In an effort to get things back on track, this article offers a summary of foreign trust rules, followed by a chronological review of the latest enforcement actions, relief measures, cases, regulations, and more.

II. Foreign Trust Rules

Readers must start with some fundamentals about trusts, namely, classification, reporting duties, and penalties.

A. Entity Classification

The initial inquiry in most situations, as basic as it sounds, is whether the entity in question is a "trust." The entity-classification regulations generally govern how organizations are treated for U.S. tax purposes.[1] With respect to trusts, the regulations start by indicating that an "Ordinary Trust" is an arrangement, created either by a will or by an *inter vivos* declaration, whereby trustees take title

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to property for purposes of protecting or conserving it for the beneficiaries.[2] The beneficiaries of an Ordinary Trust limit themselves to accepting the benefits thereof; they normally do not plan or create the Ordinary Trust in the first place.[3] The Internal Revenue Service ("IRS") tends to treat an arrangement as an Ordinary Trust if its purpose is to grant the trustees responsibility for protecting or conserving property for beneficiaries who are not involved with such responsibility and who are not associates in a joint enterprise designed to conduct a business.[4]

The regulations describe several other types of trusts, including so-called "Business Trusts."[5] These arrangements also involve the transfer of legal title to property to trustees for the benefit of beneficiaries, but they are different from Ordinary Trusts in that the beneficiaries usually create them as a way to carry on a for-profit endeavor that would normally occur through a corporation, partnership, or other business entity.[6]

B. Location of a Trust

If an entity is a "trust" for U.S. tax purposes, another question is whether it is domestic or foreign. This inquiry is more complicated than one might anticipate. A trust is domestic if a U.S. court can exercise primary supervision over the administration of the trust ("Court Test") and at least one U.S. person has authority to control all substantial decisions of the trust ("Control Test").[7]

A trust satisfies the Court Test if the governing document, like the trust deed, does not expressly state that the trust will be administered outside the United States, the trust is administered exclusively in the United States, and the trust is not subject to an "automatic migration provision," which would move the trust outside the United States if a U.S. court attempted to assert jurisdiction over or otherwise supervise the trust.[8] For purposes of the Control Test, the term "control" means having the power, by vote or otherwise, to make all substantial decisions for the trust, with no other person having the power to veto such decisions.[9] This encompasses all persons with decision-making authority, not just trust fiduciaries.[10] The term "substantial decision," for its part, includes any decision allowed or required under the terms of the trust deed and relevant law.[11] Any trust that fails to meet *both* the Court Test and the Control Test is a foreign trust.[12]

C. Reporting Duties

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 a Form 3520 (*Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*) within 90 days of certain events. 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.[13]

If a U.S. person is the "owner" of any portion of a foreign trust under the grantor trust rules, he essentially has two mandates. He must file a Form 3520, and he "shall be responsible to ensure" that the trust files a Form 3520-A (*Annual Information Return of Foreign Trust with a U.S. Owner*) and furnishes all required information to each U.S. person who is an owner of, or who receives a distribution from, the trust.[14]

Finally, a U.S. person ordinarily must file a Form 3520 if he receives during the year any distribution from a foreign trust, as this concept is broadly interpreted.[15]

D. Penalties and Mitigation

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.[16] 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.[17]

The IRS will not assert penalties where there is "reasonable cause" for a violation and it was not due to "willful neglect."[18] Because the IRS has never issued regulations explaining the definition of reasonable cause in the context of Form 3520 and Form 3520-A, the courts have been receptive to arguments applying standards found elsewhere in the Internal Revenue Code.[19]

Unlike the long list of penalties 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 actions involving foreign trusts have occurred recently. This article explores some of the noteworthy ones below.

A. Unresolved 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.[21] Lack of clarity from the IRS has created disagreement among U.S. tax practitioners about how to treat foreign plans. According to the 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.[22] This results in the filing of Forms 3520 and Forms 3520-A, among other international information returns.

B. Compliance Campaign

The IRS launched a "Compliance Campaign" in 2018 centered on foreign trusts, Forms 3520, and Forms 3520-A.[23] This, of course, triggered various disputes, some of which are explored later in this article.

C. No First-Time Abatements

Problems have existed for many years because the IRS immediately assesses foreign trust penalties, fails to consider legitimate "reasonable cause" positions, ignores collection freezes, refuses to apply the first-time abate policy, etc.[24] As a partial solution, the IRS issued a memo to its Appeals Officers in late 2022, indicating that they can waive penalties using the first-time abate policy when it comes to certain international information returns.[25] Unfortunately, such a memo expressly stated that such leniency is not applicable to foreign trust or gift situations.[26]

D. Administrative Relief

The IRS, cognizant of serious compliance burdens and administrative headaches, announced another solution in the form of Rev. Proc. 2020-17.[27] 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, foreign trusts.[28] Rev. Proc. 2020-17 offered *prospective* benefits in that eligible individuals are excused from filing Forms 3520 and Forms 3520-A for qualified foreign trusts in the future.[29] 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.[30] Rev. Proc. 2020-17 covered both "tax-favored foreign *retirement* trusts" and "tax-favored foreign *non-retirement* trusts."[31] The possibility of filing and penalty relief sounded great to taxpayers in theory, but many had trouble meeting the extensive eligibility criteria in practice.[32]

E. Seeking Public Input

The IRS sought public comments on Forms 3520 and Forms 3520-A in late 2022.[33] Various groups and individuals submitted thoughts relevant to this article. 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 trust and gift penalties. They also urged the IRS to expand the number and types of justifications that 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" for U.S. purposes.[34]

F. First Recent Case About Foreign Trusts

The court filings in *Ueland* ("*Ueland I*") contained the following allegations.[35] The taxpayer is a U.S. citizen who has been living and working in Australia for over a decade, since 2011. He has been fully compliant with his Australian tax obligations. Similarly, he files annual Forms 1040 (*U.S. Individual Income Tax Return*) with the IRS reporting his worldwide income, enclosing various international information returns, and paying all corresponding taxes. As an Australian resident and business owner, the taxpayer was required to participate in a common retirement vehicle, the Australian Superannuation Fund ("ASF"). The taxpayer, taking a conservative approach, treated the ASF as a foreign trust for U.S. purposes, thus triggering the need to file Form 3520 and Form 3520-A.[36]

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 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 in September 2020. The taxpayer was unaware of any problems for 2017 until he received a letter the next month, indicating that the IRS had seized funds by doing a so-called "administrative offset" from his Form 1040 for a later year, 2019. In other words, the letter indicated that the IRS had grabbed the taxpayer's income tax refund for 2019 and used it to pay the civil penalty for 2017. The letter did not identify the provision under which the IRS assessed the penalty, 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 was filing a timely Form 843 (*Claim for Refund*).

The IRS did not issue an official Notice of Disallowance of the Form 843. Instead, it sent the taxpayer a form letter vaguely stating that it 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.

Counsel for the taxpayer sent a letter asking the Appeals Office to reconsider the 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. The taxpayer listed various reasons as to 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 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 penalties are wholly inapplicable.

Taxpayers and tax practitioners were eager to read a court opinion addressing thorny issues centered on foreign trust reporting, but it was not to be. *Ueland I* came to an abrupt end, without generating any helpful analysis, when the Department of Justice ("DOJ") agreed to refund all $96,000 (plus interest) to the taxpayer before the trial began.[37]

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 the Form 3520-A was filed on time. In other words, the DOJ did not address any of the procedural issues raised by the taxpayer with the court, so they remain unanswered.[38]

G. Second Recent Case About Foreign Trusts

The taxpayer claimed victory in *Ueland I* regarding penalties for 2017, but things were not over. Another quarrel emerged on similar issues, this time centered on 2018 ("*Ueland II*").[39] Many of the key facts and issues are identical in both cases, so they will not be repeated here.

The fight in *Ueland II* again focused on the ASF, which utilized a fiscal year ending June 30, not a calendar year. The IRS took the position that the relevant Form 3520-A for 2018 was filed late, such that penalties apply. The taxpayer adopted the opposite stance, maintaining that he submitted Form 3520-A in a timely manner.

The taxpayer constructed his argument on the following building blocks. He was confident that he sent a timely filing-extension request for Form 3520-A for 2018 to the IRS, thereby moving the due date to March 15, 2020. The taxpayer had less conviction, however, when it came to the specific date on which he actually filed Form 3520-A. The Complaint stated that he "believed" that he mailed the Form 3520-A before the extended deadline, but had "no evidence of doing so." The taxpayer then pointed out that the extended deadline coincided with the beginning of the coronavirus disease (COVID) pandemic, IRS operations were crippled during that period, Forms 3520-A must be paper-filed, and the IRS Commissioner has publicly recognized widespread return-processing problems. Combining these items, the Complaint stated the following: "Based on *reasonable inferences* from IRS records, the lack of records provided in response to a Freedom of Information Act request, and the IRS's own admissions concerning pandemic-era paper processing failures, the IRS operations at the Ogden Campus received the 2018 Form 3520-A … in early 2020 and failed to process it until July 12, 2021."

The taxpayer took a number of steps to resolve issues with the IRS short of litigation. These included filing

a penalty abatement request, a Collection Due Process hearing demand, an informal refund claim, and a formal refund claim on Form 843. None of these efforts was successful. The taxpayer, therefore, initiated a Suit for Refund. He claimed that penalties were unwarranted because of lack of penalty computations under Code Sec. 6751(a), absence of the supervisory approvals required by Code Sec. 6751(b), applicability of COVID-related penalty relief granted by Notice 2022-36, and timely filing of Form 3520-A in the first place.

The public again waited eagerly for judicial guidance about foreign trust reporting and penalties, but this would not materialize, just as it had not before with *Ueland I*. Despite the fact that the taxpayer lacked direct proof that he timely filed the Form 3520-A for 2018, the government still folded. Representatives of the taxpayer explained in May 2024 that the parties filed a joint Motion with the court to halt the proceedings, the government planned to refund or credit the penalty, and the case would then be dismissed. The representatives also indicated that "the basis for the government's concession is unclear."[40]

H. Third Recent Case About Foreign Trusts

Geiger is a District Court battle over a "jeopardy assessment" made by the IRS in connection with three foreign trusts.[41]

The court filings in this case center on the largest trust, based in Liechtenstein, known as the World Capital Foundation ("WCF"). They indicate that Father, a German citizen and resident, formed and funded WCF in 1982. He died soon thereafter, in 1989. The trustees of WCF, known as the council, then administered matters for years in accordance with the governing documents. Son, who was a U.S. resident thanks to his Green Card, unsuccessfully tried to gather information about the assets and operations of WCF. Finally, he relinquished his Green Card in 2010, hired attorneys in Liechtenstein, and got the funds from WCF transferred to his control in 2011.

Son applied in 2012 to resolve his prior U.S. non-compliance associated with WCF through the Offshore Voluntary Disclosure Program ("OVDP"). The OVDP covered 2003 through 2010. Among other things, Son filed Forms 1040X (*Amended U.S. Individual Income Tax Returns*), Forms 3520, and Forms 32520-A for the relevant years. He also made several large payments to cover taxes and penalties.

In making these filings under the OVDP, Son treated WCF as a "grantor trust" for U.S. tax purposes. This classification was a big deal. Why? Labeling WCF a grantor trust resulted in Son being the owner of (and taxable on) *all* the income generated by WCF, whereas calling WCF a non-grantor trust would mean that Son only had to pay U.S. income taxes on actual distributions made to him. Moreover, if WCF were a grantor trust, then all its assets would be subject to the "exit tax" when Son expatriated from the United States in 2010. The difference to Son (in terms of taxes, penalties, and interest) of characterizing WCF as a grantor trust *versus* a non-grantor trust was between $15 and $20 million.

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Attorneys for Son realized the problem soon after the OVDP materials had been submitted, including Forms 3520 and Forms 3520-A treating WCF as a grantor trust. The IRS asked Son to grant an extension of the assessment period for 2010 and 2011 as it reviewed the OVDP application. He declined. Later, Son filed "protective" Claims for Refund for the entire period covered by the OVDP (*i.e.*, 2003 through 2010), taking the position that WCF should have always been treated as a non-grantor trust, instead of a grantor trust. Son died in early 2015, his Estate came into existence, Grandson became Personal Representative of the Estate, and the skirmish with the IRS continued.

Interactions with the IRS about the OVDP had been ongoing for five years, so Grandson decided to distribute the assets of the Estate in 2017 to the two beneficiaries. These consisted of himself and his mother. Grandson transferred most of the funds to certain Wyoming trusts, supposedly for traditional estate-planning purposes. Notably, Grandson did not distribute about $800,000 from the Estate because he anticipated that the IRS battle might result in additional liabilities.

In late 2019, the Revenue Agent handling the OVDP issued an Information Document Request stating, among other things, that the IRS attorneys agreed with his decision that WCF was a non-grantor trust. The Revenue Agent also asked Grandson to send another set of Forms

1040X and Forms 3520 treating WCF as a non-grantor trust. He did so in early 2020.

A few months later, the IRS supposedly changed its position, indicating in a separate Information Document Request that WCF was a grantor trust and any failure by Grandson to treat it as such would result in "removal" from the OVDP for "lack of cooperation." The IRS later presented three options to Grandson. First, he could remain in the OVDP and treat WCF as a grantor trust, which would trigger a liability of around $6 million. Second, he could stay in the OVDP, treat WCF as a non-grantor trust, and expand the period to include 2011, thereby resulting in more than $20 million in liability. Third, he could be "removed" from the OVDP and subjected to a standard audit for all years. This final alternative created the risk of a liability higher than the total value of the Estate's assets, taking into account income taxes, tax-related penalties, interest charges, and large information-reporting penalties for unfiled Forms 3520, Forms 3520-A, and other information returns. As part of the continued communications with the Revenue Agent, Grandson sent a letter explaining that the Estate had been liquidated in 2017, the majority of the funds went sent to Wyoming trusts for estate-planning reasons, and Grandson held back about $800,000 to cover any additional liabilities to the IRS associated with the OVDP.

Grandson selected the third option described above, and "removal" occurred. The IRS started an audit in early 2023. The IRS then issued Notices of Jeopardy Assessments in December 2023. Generally, the IRS can utilize these only when it determines that a taxpayer intends to quickly leave the United States, remove property from the United States, conceal himself or his property, or take any other action that tends to prejudice or make ineffectual the normal IRS procedures for assessment and collection of taxes. When the IRS makes a Jeopardy Assessment, the amounts "become immediately due and payable."[42]

Grandson, as Personal Representative of Son's Estate, filed suit in District Court challenging the validity of the Jeopardy Assessments. He raised several arguments against the expedited procedures, including the impropriety of including foreign trust penalties in the liability calculation. He suggested that such penalties are not "tax deficiencies" subject to jeopardy maneuvers, Forms 3520-A are only required for grantor trusts, even if WCF and the other foreign trusts were grantor trusts, the IRS cannot "stack" Form 3520 and Form 3520-A sanctions on them, and the IRS improperly calculated penalty figures based on "inferred distributions" from foreign trusts.

The narrow issue in the current litigation of whether the IRS had the right to make jeopardy assessments is interesting, but what might be more notable are the additional issues involving foreign trusts, Forms 3520, and Forms 3520-A that will be addressed in related cases in the future.[43]

I. Proposed Regulations

The IRS released proposed regulations on foreign trust and gift reporting in May 2024.[44] They are broad, introducing changes to several tax provisions, as well as prior IRS guidance.[45] Public comments were due July 2024, the related hearing was scheduled for August 2024, and the IRS will work thereafter to incorporate such input into the final regulations in order to avoid future challenges by taxpayers under the Administrative Procedures Act.[46]

IV. Conclusion

Foreign trust matters have been in flux for many years, and this article shows that such fluidity will persist in the future. Taxpayers continue to struggle with classification questions, the IRS proceeds with its Compliance Campaign, litigation focused on foreign trust penalties mounts, important issues remain unresolved by the courts, and new regulations might take effect soon. Given this reality, taxpayers connected in any manner with foreign trusts would be wise to stay updated.

ENDNOTES

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1 Reg. §§301.7701-1(a) and (b).

2 Reg. §301.7701-4(a).

3 *Id.*

4 *Id.*; *see also* LTR 200508004 (Feb. 25, 2005).

5 Reg. §301.7701-4. The regulation also defines Investment Trusts, Liquidating Trusts, and Environmental Remediation Trusts.

6 Reg. §301.7701-4(b).

7 Reg. §301.7701-7(a); *see also* Reg. §301.7701-7(c)(3).

8 Reg. §§301.7701-7(c)(1) and (c)(4)(ii).

9 Reg. §301.7701-7(d)(1)(iii).

10 *Id.*

11 Reg. §301.7701-7(d)(1)(ii). The following are considered "substantial decisions" in this context: whether and when to distribute income or corpus of the trust, the amount of any distributions, the selection of a beneficiary, whether to remove, add, or replace a trustee, and whether to terminate the trust.

12 Code Sec. 7701(a)(31)(B); Reg. §301.7701-7(a)(2).

[13] Code Secs. 6048(a)(1)–(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.

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

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

[16] Code Secs. 6677(a), 6667(c), and 6048(a)–(c).

[17] Code Sec. 6677(b).

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

[19] *See, e.g.*, CCA 200645023 (Jun. 20, 2006); *B.C. James*, DC-FL, 2012-2 USTC ¶50,520, 100 AFTR 2d 2012-5587; *J. Moore*, DC-WA, 2015-1 USTC ¶50,258, 115 AFTR 2d 2015-1375; *In re Wyly et al.*, BC-DC-TX, 2016-1 USTC ¶50,282, 552 BR 338, 117 AFTR 2d 2016-2058.

[20] Code Sec. 6677(e).

[21] 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 Florida Tax Rev. (2015).

[22] 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), pgs. 38 and 39.

[23] 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).

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

[25] "Appeals Guidance Issued on Abatement for International Penalties," 2022 Tax Notes Today International 248-23 (Dec. 7, 2022).

[26] "Appeals Guidance Issued on Abatement for International Penalties," 2022 Tax Notes Today International 248-23 (Dec. 7, 2022); IRM 8.11.5.1(3) (Dec. 18, 2015); IRM 8.11.5.1(12) (Dec. 18, 2015).

[27] Rev. Proc. 2020-17, IRB 2020-12, 539; Annagabriella Colon, "IRS Guidance Eases U.S. Taxpayers' Information Reporting Duty," 2020 Tax Notes Today Federal 42-3, Document 2020-8022 (Mar. 3, 2020).

[28] Rev. Proc. 2020-17, IRB 2020-12, 539, Section 1.

[29] Rev. Proc. 2020-17, IRB 2020-12, 539, Section 3.

[30] Rev. Proc. 2020-17, IRB 2020-12, 539, Sections 6.01 and 7.

[31] Rev. Proc. 2020-17, IRB 2020-12, 539; Section 5.01.

[32] Rev. Proc. 2020-17, IRB 2020-12, 539; Section 5.03.

[33] Fed. Reg. Vol. 87, No. 241, page 77167, Dec. 16, 2022.

[34] *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).

[35] "IRS Didn't Follow Procedures When It Seized Funds, Couple Alleges," 2023 Tax Notes Today International 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).

[36] "IRS Releases OVDP, Streamlined Program Hotline Guide," 2017 Worldwide Tax Daily 160-16; Document 2017-66433 (explaining that recent internal documents show that the IRS instructed its personnel to take the position that ASFs do not benefit from a favorable treaty provision and they must be reported on various information returns, including, but not limited to, Forms 3520 and Forms 3520-A).

[37] 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 International 196-23 (Sep. 20, 2023).

[38] Andrew Valverde, *Foreign Trust Penalty Complaint Dismissed After Stipulation*, 181 Tax Notes Federal 538 (Oct. 16, 2023).

[39] Andrew Velarde, "IRS to Dodge Agency Failure Claims in Foreign Trust Reporting Case," 2024 Tax Notes Today Federal 99-5 (May 21, 2024); *Philip C. Ueland and Nicole S. Ueland*, Complaint, U.S. Court of Federal Claims, Case No. 1:24-cv-00367 (Mar. 7, 2024).

[40] Andrew Velarde, "IRS to Dodge Agency Failure Claims in Foreign Trust Reporting Case," 2024 Tax Notes Today Federal 99-5 (May 21, 2024).

[41] *Gunter Grant Geiger, individually and as Personal Representative of the Estate of Gunter A. Geiger*, District Court, Southern District of Florida, Case No. 9:24-cv-80562, Verified Complaint for Judicial Review and Abatement of Jeopardy Assessments (May 1, 2024); Andrew Velarde, "Heirs Ready $15 Million Fight with IRS over Grantor Trust Status," 2024 Tax Notes Today Federal 87-2 (May 3, 2024).

[42] Code Sec. 6851; Reg. §1.6851-1; Code Sec. 6861; Reg. §301.6861-1.

[43] In addition to the litigation discussed in this article, the parties are also in the throes of Tax Court litigation regarding income taxes, transferee liability, and other issues. *See* Tax Court Docket Numbers 4323-24, 4327-24, 4329-24, and 5511-24.

[44] REG-124850-08 (May 7, 2024); "Proposed Regs Address Foreign Trust Information Reporting," 2024 Tax Notes Today International 90-20 (May 7, 2024).

[45] REG-124850-08 (May 7, 2024). The proposed regulation intend to alter Code Secs. 643, 679, 6039F, 6048, and 6677 of the Internal Revenue Code, Notice 97-34, and Revenue Procedure 2020-17.

[46] Andrew Velarde, *Detailed Foreign Trust, Gift Regs Address Reporting and Penalties*, 183 Tax Notes Federal 1261 (May 13, 2024).