

**Contact**

**Houston**

1200 Smith Street, Suite 1400  
Houston, Texas 77002-4310  
Tel: 713.658.1818  
Fax: 713.658.2553

**Atlanta**

191 Peachtree Street, N.E.,  
Forty-Sixth Floor  
Atlanta, Georgia 30303  
Tel: 404.659.1410  
Fax: 404.659.1852

**Philadelphia**

300 Conshohocken State Road  
Suite 570  
West Conshohocken, PA 19428  
Tel: 610.772.2300  
Fax: 610.772.2305

**San Antonio**

112 East Pecan Street, Suite  
1450  
San Antonio, Texas 78205  
Tel: 210.253.8383  
Fax: 210.253.8384

## **Detailed Foreign Trust, Gift Regs Address Reporting and Penalties (Tax Notes, Andrew Velarde, author)**

**Patrick W. Martin Quoted in Tax Notes Article on The IRS and Treasury Proposed Regulations on Foreign Trust and Foreign Gift and Bequest Transactions**  
June 4, 2024

A Tax Notes article by Andrew Velarde quotes Patrick W. Martin, an international tax shareholder at Chamberlain Hrdlicka. The article details recently released proposed regulations on foreign trusts, foreign gifts and foreign bequest transactions. The 153-page document addresses what taxpayers must report and creates rules on penalties resulting from failures to report.

In some cases, the penalties can be 35% or 25% of the total asset values involved.

These regulations are not typical, where the Treasury and IRS focus on a particular provision of the law, a particular code section. Here, they not only focus on section 6048 . . . but also a host of other" key code sections, commented Martin.

The government has received multiple comments to date, and the public will have until the beginning of July to submit public comments.

For instance, there are extensive rules regarding so-called dual resident taxpayers, a concept created by regulations and not found in the statute. There are key technical definitions including how and when an individual is a United States person. The regulations also establish special rules for both foreign gift and foreign trust reporting for international taxpayers that are subject to tax treaty law, including when someone is or is not a resident under U.S. law to claim residency in another country so that filing is not required.

A similar issue was raised in *Aroeste v. United States*, No. 24-338 (9th Cir.), where the Chamberlain Hrdlicka tax team led by Martin secured a significant win for the taxpayer in district court, claiming that information reporting for a treaty resident of Mexico (who held a U.S. green card) was not required. The government recently dropped its appeal to the 9<sup>th</sup> Circuit last month.

Martin commented that, Treasurys reliance on section 301.7701(b)-7 in the regs was misplaced. Neither statute nor treaty has a dual resident tax concept. Tax residency tiebreaker rules necessarily provide that a taxpayer has only one tax residency, and Aroeste had an excellent step-by-step analysis of those rules. There is not a concept or definition of dual residency anywhere in title 26 or in any tax treaties. That concept simply does not exist in the law. Its the IRS and Treasury who have created these rules, Martin said. These concepts are created from whole cloth in the regulations

## **Detailed Foreign Trust, Gift Regs Address Reporting and Penalties (Tax Notes, Andrew Velarde, author), Continued**

and are now being extended to a class of individuals who are not residents of the U.S. under treaty law. . . The stakes are very high for international taxpayers to have clear guidance as to how tax treaties determine their tax residency status and hence, their reporting requirements.

To view the full article, subscribers may click - **Detailed Foreign Trust, Gift Regs Address Reporting and Penalties (Tax Notes, Andrew Velarde, author)**