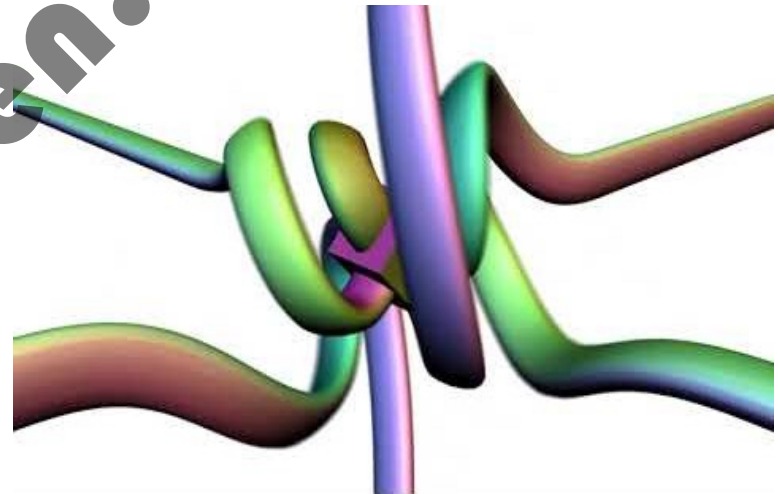


# FATCA – Beyond the Basics

## Foreign Retirement Account Reporting

Presented by  
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# Learning Objectives

- Determine if taxpayer's foreign investment is a passive foreign investment company
- Understand complex reporting requirements required for foreign pension & retirement accounts
- Recognize which foreign investments may be trusts subject to FATCA reporting
- Properly complete *Forms 8621 & 3520*
- Help clients remain compliant

# How we'll untangle the knot

- Separating fact [FATCA] from BSA
- Foreign retirement accounts are not the same ball of wax
- Starting with what we know: FBAR & *Form 8938*
- Mutual fund mess: *Form 8621*
- Trust is a one-way street: *Form 3520*
- Let the legal cats unravel the rest



# Looking into the past

- Bank Secrecy Act of 1970 (BSA)
  - Enacted to combat offshore money laundering
  - Requires detailed financial disclosure
  - But IRS cannot initiate a tax audit
- Reports required:
  - Currency transactions > \$10K
  - International movement of foreign currency
  - Disclosure of foreign bank accounts
  - Suspicious activity report (e.g. structuring)
- Post-9/11, focus shifted to terrorist activity



# A new purpose

- Foreign Account Tax Compliance Act (FATCA)
  - Enacted in 2010
  - To recoup tax shortfall resulting from offshore abuses (estimated at \$100 billion per year)
  - Actual collections only \$11 billion over 10 years (mostly due to penalties for non-compliance)
- True purpose?
  - Forced disclosures
  - Shift reporting burden from US taxpayers to foreign financial institutions (FFIs)



# Carrot or Stick

- FFIs must disclose info about US account holders OR face 30% withholdings on deposits received
  - More than 300 bank have signed on with IRS
  - Submit *Form 8966*
- Threaten to close accounts of US citizens abroad to avoid reporting
  - Foreign travelers in US may become accidental “residents” due to travel disruptions
  - REMINDER: IRS granted exclusion from day count for any single 60-day consecutive period during 2020

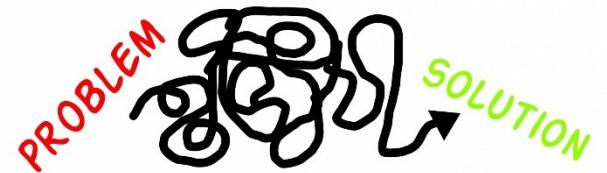
# No financial privacy

- The Right to Financial Privacy Act (1978)
  - Individuals have reasonable expectation to financial privacy
- Gramm-Leach-Bliley Act (1999)
  - Financial institutions must disclose notices of privacy policies
- BUT then... Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (2001)
  - Info sharing btw financial institutions & law enforcement
- FATCA
  - “The beginning of the end of financial privacy”



# Practitioner Warning

- Almost 40 forms requiring varying levels of disclosure
  - Ranging from the simple to the complex
  - Penalties from the relatively benign to oppressive
  - Criminal penalties for willful non-compliance
- Interpretation of applicable rules requires
  - Experience & expertise
  - Legal skills
  - Specialization in intl tax law, treaty interpretation, access to foreign source data
- Tax practitioner's duties
  - Issue-spot
  - Refer to legal counsel







# Polling Question # 1

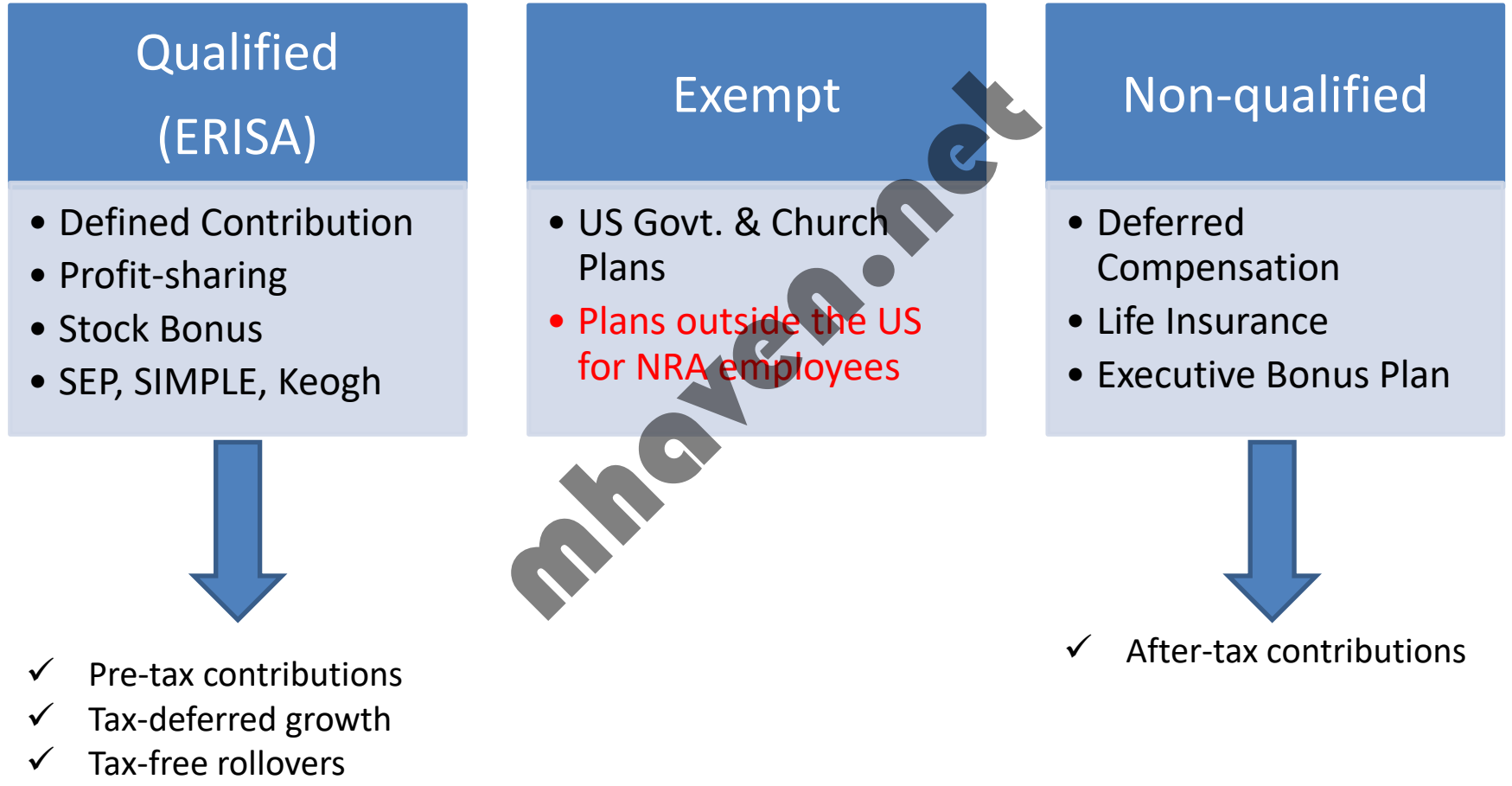
FATCA reporting requirements infringe on individual rights to financial privacy.

- True
- False

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# Retirement Accounts in the US



# Retirement Accounts Abroad

- NOT “qualified”
- Tax treatment, in general:
  - No tax-deduction for employEE contribution
  - Must add employER contribution to wage income [BUT not eligible for Foreign Earned Income Exclusion]
  - Income & growth during pay-in phase taxed annually
  - Distributions taxed in US *and* abroad [mitigate with Foreign Tax Credit]
  - No basis adjustment for amounts previously taxed
- Subject to currency fluctuations



# A Strengthening Dollar Hurts

## FACTS

- US citizen lives & works in Mexico
- Employer contributes 100,000 Mex\$ each month for 10 years
- Employee takes lump-sum distribution before returning to US

## Assumptions

- Exchange rate was 13 Mex\$ / 1 USD during pay-in
- Exchange rate is 19 Mex\$ / 1 USD at pay-out

**10,000/mo X 12 mos X 10 yrs = 1,200,000 Mex\$**

**→ \$92,000 US (pay-in) versus \$64,000 (pay-out)**

# Tax treaty may help

Attach a separate Form 8833 for each treaty-based return position taken. Failure to disclose a treaty-based return position may result in a penalty of \$1,000 (\$10,000 in the case of a C corporation) (see section 6712).

Name U.S. taxpayer identifying number Reference ID number, if any (see instructions)

Address in country of residence Address in the United States

- Reciprocal provisions reduce (or exempt):
  - US tax of foreign taxpayers on US-source income
  - Foreign tax of domestic taxpayers on foreign-source income

Check one or both of the following boxes as applicable.

- The taxpayer is disclosing a treaty-based return position as required by section 6114
- The taxpayer is a dual-resident taxpayer and is disclosing a treaty-based return position as required by section 7701(b)

Note: If the taxpayer is a dual-resident taxpayer and a long-term resident of a foreign country electing to be treated as a resident of a foreign country for purposes of section 6013(d)(2), the taxpayer will be deemed to have expatriated pursuant to section 877A. For more information, see the instructions.

Check this box if the taxpayer is a dual-resident taxpayer and is disclosing a treaty-based return position as required by section 7701(b)

- Override tax code if treaty position claimed
  - Must file tax return even if no filing requirement
  - Must attach *Form 8833* (\$1,000 penalty for failure to file)
  - Does not apply to state income tax

1 Enter the specific treaty position relied on:  
a Treaty country \_\_\_\_\_  
b Article(s) \_\_\_\_\_

2 List the Internal Revenue Code provision(s) overruled or modified by the treaty-based return position.

3 Name, identifying number (if available to the taxpayer), and address in the United States of the payor of the income (if fixed or determinable annual or periodical). See instructions.

- Begin analysis of tax on all foreign-source with Treaty research
  - Only 68 with US
  - Generally do not treat foreign retirement plans as “qualified” but may provide for lower tax rate

4 List the provision(s) of the limitation on benefits article (if any) in the treaty that the taxpayer relies on to prevent application of that article.



# Treaty Analysis

1. Read *entire* treaty; review terms & definitions
  - Resident determined by where person resides
  - US person = US citizen or resident alien (incl. covered expatriate)
  - Foreign person = non-US person (e.g., NRA)
2. Hone in on applicable article
  - Distinguish btw public pension (often not taxable by country of residence; e.g., Social Security) vs private pension
  - Confirm that Saving Clause does not override – used to resolve ambiguities/conflicts in favor of US govt [“Notwithstanding any provision except...US may tax”]
3. Refer to Technical Explanation (as avail. on US Treasury Tax Policy web-page)
4. Search IRS rulings/memos & court cases → get HELP!

## NOTE:

- If no treaty, earnings are not protected → growth in retirement acct is immediately taxable (e.g., Singapore CPF)
- If treaty, earnings during growth phase generally not taxed (e.g., UK pension)



# International Plans

- Pension, annuity or trust established by foreign employer or other entity
  - **Australian Superannuation** – requires min percentage of annual income to be set aside for retirement
  - **Singaporean Central Provident Fund (CPF)** - compulsory savings/pension plan for working citizens & permanent residents used to fund retirement, healthcare & housing
  - **Hong Kong Mandatory Provident Fund (MPF)** – mandatory contributions by employed & self-employed to privately operated pension funds
  - **Malaysian Employees Provident Fund (EPF)** – compulsory savings plan for private-sector workers
- A payment from foreign insurance company
- A payment from foreign government or agencies, including foreign social security pension
  - Generally, taxed here & abroad
  - Unless Totalization Agreement [currently 26] → taxed by country of residence only







## Polling Question # 2

The tax benefits of foreign retirement accounts include:

- A. Tax deductible contributions and tax-deferred growth.
- B. Tax-free distributions.

- A only.
- B only.
- Both A and B.
- Neither A nor B.

# OFF\$HORE BANKING



# US Reporting

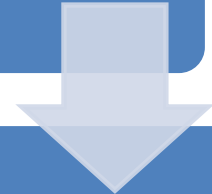
## Income Tax

- Incl. plan contributions in wage income (unless exempt by treaty)
- Wages but not plan cntribtns eligible for Foreign Earned Inc Exclsn (*Form 2555*)
- Foreign Tax Credit on all non-excludable, double-taxed income (*Form 1116*)
- Be sure to answer Questions 7 & 8 on Schedule B



## Foreign Account & Asset Reporting

- *Form 8938* – cross –reference with inc rptd on other schedules (e.g., Schedule B, D, E, etc.)
- *FinCEN 114* (e-file independently)



## Other (FATCA)

- *Form 8621* if PFIC (e.g. mutual fund)
- *Form 3520* if reportable event with “trust”

# Basic Reporting – A Refresher

- Most foreign retirement accounts are subject to both BSA & FATCA regimes
  - Even if the retirement plan or pension is not specifically listed in IRS instructions
  - These plans are merely the accounts in which reportable assets are held
  - Qualified plans are exempt but foreign accounts are generally not “qualified”
- Must file FBAR and *Form 8938* if reporting thresholds are met





# Foreign Accounts

- US person must file if:
  - Financial interest or signatory authority
  - Foreign financial account(s) valued > \$10K
- Valuation steps:
  1. Determine highest value of each account during calendar year
  2. Convert to USD using exchange rate on 12/31
  3. Aggregate all account values
- Accounts include banks, brokerage accounts, insurance cash values, annuities, mutual funds



# US Person

- US Citizen
- US Resident Alien
  - Green Card Test: *Tax* residency is permanent unless judicially/administratively revoked or proactively abandoned
  - Substantial Presence Test: Must be in US > 183 days
- Entities, incl. corporations, partnerships, LLCs, trusts & estates



# FBAR FILING

- FinCEN 114
  - Must e-file through BSA website or tax prep software
  - Due 4/15 (automatic extension to 10/15)
  - If residing abroad, due 6/15 (auto xtn 10/15)
- Penalties
  - If non-willful: \$14,489 [after 1/24/22]\*
  - If willful: greater of \$144,886 or 50% of account value (+ criminal sanctions)

\* Inflation-adjusted since 2015



# Foreign Assets

- Individuals & “specified entities” must file
  - domestic corporation, partnership or trust
  - formed to hold “specified foreign financial assets”
- Specified assets incl foreign pension & deferred compensation plans
- Filing thresholds
  - “Foreign” must be a full-time resident > 1 year (Bona Fide Residence) or present > 330 full days during any 12-month (Physical Presence)

	Single or MFS	MFJ
Domestic – living in the US	\$50K on 12/31 OR \$75K at any time	\$100K on 12/31 OR \$150K at any time
Foreign – living outside of the US	\$200K on 12/31 OR \$300K at any time	\$400K on 12/31 OR \$600K at any time



# Form 8938 Filing

If you have attached continuation statements, check here  Number of continuation statements \_\_\_\_\_

1 Name(s) shown on return 2 Taxpayer Identification Number (TIN)

- 3 Attach to Form 1040
  - a  Specified individual
  - b  Partnership
  - c  Corporation
  - d  Trust

4 If you checked box 3a, skip this line 4. If you checked box 3b or 3c, enter the name and TIN of the specified individual who closely holds the partnership or corporation. If you checked box 3d, enter the name and TIN of the specified person who is a current beneficiary of the trust. (See instructions for definitions and what to do if you have more than one specified individual or specified person to list.)

- Due 4/15 (+ extension)

### Part I Foreign Deposit and Custodial Accounts Summary

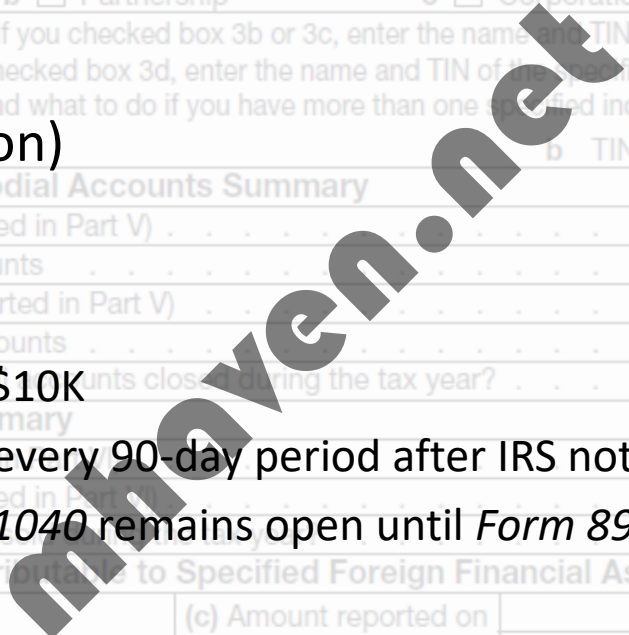
1	Number of Deposit Accounts (reported in Part V)	▶	
2	Maximum Value of All Deposit Accounts		\$
3	Number of Custodial Accounts (reported in Part V)	▶	
4	Maximum Value of All Custodial Accounts		\$
5	Were any foreign bank or investment accounts closed during the tax year?		<input type="checkbox"/> Yes <input type="checkbox"/> No

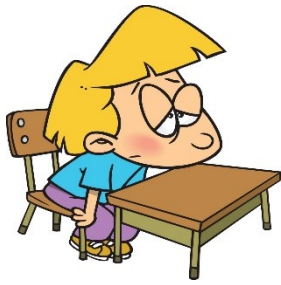
### Part II Other Foreign Assets Summary

1	Number of Assets	▶	
2	Maximum Value of All Assets (reported in Part V)		\$
3	Were any foreign bank or investment accounts closed during the tax year?		<input type="checkbox"/> Yes <input type="checkbox"/> No

### Part III Summary of Tax Items Attributable to Specified Foreign Financial Assets (see instructions)

(c) Amount reported on \_\_\_\_\_ Where reported \_\_\_\_\_





## Polling Question # 3

Since FATCA and FBAR reporting regimes request that a taxpayer provide almost identical information, only one or the other form must be submitted.

- Correct
- Incorrect

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# Passive Foreign Investment Co's

- A pooled investment vehicle
  - Mutual funds
  - Money market accounts
  - Pensions & annuities
  - Partnerships
  - REITs
  - Retirement accounts (if invested in any of the above)
- Must be incorporated
- Must be foreign
- Must have passive income or assets



# Is it Passive?

- EITHER: Income Test
  - ≥ 75% of gross income must be passive
    - Interest income
    - Dividends
    - Capital gains
    - Royalties (unless derived from an active trade or business)
    - Rents (unless derived from actively managed property)
- OR: Asset Test
  - ≥ 50% of total assets must be held for the purpose of generating passive income
- Once a PFIC, always a PFIC!



# PFIC Regime

- Created to equalize treatment between foreign & domestic mutual funds
  - Domestic funds must distribute *all* (but 2%) of income & CGs to S/Hs annually
    - tax liability passes from investment company to individual shareholders
  - BUT small S/Hs of foreign funds not subject to reporting reqs for controlled corps
    - tax liability remains with investment co which is not liable for tax on foreign-source income!
- UNTIL... Tax Reform Act of 1986

1986



# Polling Question # 4

Most foreign retirement accounts, pensions and annuities are deemed to be passive and, therefore, subject to the PFIC regime of 1986.

- True
- False

# Tax Treatment of PFICs



- Default (§1291)
  - Defer recognition of *undistributed* income until distribution
  - Taxed at ordinary rates
- OR make election to recognize income sooner in exchange for cap gains treatment on distribution
  1. Qualifying Electing Fund (QEF)
  2. Mark-to-Market (MTM)



# Election: QEF

- S/H includes pro rata share of fund's investment income and capital gains on *Form 1040*
  - Whether or not distributed
  - Only available if fund provides conforming Annual Information Statement [**unlikely!**]

SIMILAR TO: §83(b) treatment of restricted stock

Recognize value of stock as compensation inc – treat all appreciation as CG

- Election must be made on timely filed return in 1<sup>st</sup> year of fund ownership
  - Cannot be made retroactively
  - Must make Purging Election to switch from default treatment to QEF

# SAMPLE: Annual Info Stmt [very rare!]

## MACKENZIE INTERNATIONAL EQUITY INDEX ETF (THE “FUND”)

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### PFIC Annual Information Statement (“AIS”)

For the Year ended December 31, 2020

#### IMPORTANT TAX NOTICE TO U.S. UNITHOLDERS OF THE FUND

This statement is provided to unitholders who are United States persons for purposes of the U.S. Internal Revenue Code of 1986, as amended (“IRC”) and the regulations thereunder. United States persons include U.S. citizens (whether or not they are U.S. residents), certain individuals with U.S. permanent resident status, U.S. corporations, and certain U.S. trusts and estates. Investors in the Fund should consult with a U.S. tax professional to determine whether they are United States persons.

The Fund may be considered a Passive Foreign Investment Company (“PFIC”) under U.S. Internal Revenue Service (IRS) administrative practice. We recommend that all U.S. taxpayer clients consult a tax advisor concerning the overall tax consequences of their ownership of units of the Fund and their U.S. tax reporting requirements. You can also find information on U.S. tax rules applicable to investments in a PFIC on the IRS website, [www.irs.gov](http://www.irs.gov), by searching “Form 8621 Instructions”.

This statement is to provide information that will enable you, if you choose, to treat the Fund as a Qualified Electing Fund (QEF) for U.S. federal income tax purposes. Generally, an election is filed for each fund on which you wish to make a QEF election. If you hold a Mackenzie fund that holds one or more underlying funds, you will receive a combined PFIC AIS containing information that will enable you to elect to treat any or all of the funds as a QEF as you choose, as well as information relating to your units and values in your indirect holdings.

# Election: MTM

- Fund shares held at year-end are deemed sold
  - S/H reports resulting gain (loss) as ordinary income (loss)
  - S/H's basis is adjusted
  - Only available if fund is publicly traded on US exchange [**unlikely!**]

SIMILAR TO: §1256 treatment of regulated futures & foreign currency contracts  
Deemed sale on 12/31 recognized as 40% STCG & 60% LTGG

- Election must be made on timely filed return in 1<sup>st</sup> year of fund ownership
  - Cannot be made retroactively
  - Must make Purging Election to switch from default treatment to MTM

# Example: MTM Election

## Facts

- US citizen bought foreign mutual fund on 1/1/16 for \$35K
- FMVs: \$42K (12/31/16), \$33K (12/31/17), \$44K (12/31/18)
- Sold all shares on 11/15/19 for \$50K [theoretical gain = \$50K – 35K = \$15K]

## Tax Computation

Year	Adjusted Basis	FMV at Yr-end or Sale Price	Realized Gain (Loss)	Recognized Gain (Loss) Rptd as Ordinary D = allowable C	Adjusted Basis for Next Yr
	A	B	C = B – A	D = allowable C	E = A + D
2016	35,000	42,000	7,000	7,000	42,000
2017	42,000	33,000	(9,000)	(7,000)	35,000
2018	35,000	44,000	9,000	9,000	44,000
2019	44,000	50,000	6,000	6,000	0

# Purging Election

- Used to remove §1291 taint
- Convert from default PFIC tax treatment to QEF or MTM
- Must recognize gain resulting from deemed sale at year-end
- Treated as Excess Distribution



# Excess Distributions

- Default treatment if QEF or MTM election not made
- No income recognition until excess distribution
  - Sale of fund OR
  - Actual distribution > 125% of average distribution in prior 3 years
- Distribution is annualized over lesser of 3 years or actual holding period
  - Tax computed based on highest marginal rate in effect for each year
  - Must also pay accrued interest
- No loss recognition allowed

# Example: Default

## Facts

- US citizen invested \$10K in foreign mutual fund (PFIC) on 1/1/17
- Did not elect QEF or MTM treatment
- No dividends paid throughout holding period
- Sold all shares for \$16K on 12/31/19

## Tax Computation

1. Total gain (\$6K) must be allocated over holding period based on 365-day year [or 366 days if leap year] →  $\$6,000 \div 1,095 \text{ days} = \$5.48/\text{day}$
2. Separate gain into current year (TY'19) and pre-current (TY'17 & TY'18)
  - a. Current:  $\$5.48/\text{day} \times 365 \text{ days} = \$2,000$   
→ Ordinary Income (report on **Form 8621, Part V, Line 16b** & **Form 1040, Schedule 1, Other Income**)
  - b. Pre-current:  $\$5.48/\text{day} \times 730 \text{ days} = \$4,000$   
TY'17:  $\$2,000 \text{ gain} \times 39.6\% \text{ highest rate} = \$792$   
TY'18:  $\$2,000 \text{ gain} \times 37\% \text{ highest rate} = \$740$   
→ Tax = \$1,532 (report on **Form 8621, Part V, Line 16c** & **Form 1040, Line 12a "1291 TAX"**)
3. Calculate interest due on "under-payment" for TY'17 & TY'18 (report on **Form 8621, Part V, Line 16f** & **Form 1040, Schedule 2, Line 8 "1291INT"**)

**Part V Distributions From and Dispositions of Stock of a Section 1291 Fund** (see instructions) Complete a separate Part V for each excess distribution and disposition. See instructions.

15a	Enter your total distributions from the section 1291 fund during the current tax year with respect to the applicable stock. If the holding period of the stock began in the current tax year, see instructions	15a	
b	Enter the total distributions (reduced by the portions of such distributions that were excess distributions but not included in income under section 1291(a)(1)(B)) made by the fund with respect to the applicable stock for each of the 3 years preceding the current tax year (or if shorter, the portion of the shareholder's holding period before the current tax year)	15b	
c	Divide line 15b by 3.0. (See instructions if the number of preceding tax years is less than 3.)	15c	
d	Multiply line 15c by 125% (1.25)	15d	
e	Subtract line 15d from line 15a. This amount, if more than zero, is the excess distribution with respect to the applicable stock. If there is an excess distribution, complete line 16. If zero or less and you did not dispose of stock during the tax year, do not complete the line 16. See instructions if you received more than one distribution during the current tax year. Also, see instructions for rules for reporting a nonexcess distribution on your income tax return	15e	
f	Enter gain or loss from the disposition of stock of a section 1291 fund or former section 1291 fund. If a gain, complete line 16. If a loss, show it in brackets and do not complete line 16	15f	
16a	If there is a positive amount on line 15e or 15f (or both), attach a statement for each excess distribution and disposition. Show your holding period for each share of stock or block of shares held. Allocate the excess distribution or gain to each day in your holding period. Add all amounts that are allocated to days in each tax year.		
b	Enter the total of the amounts determined in line 16a that are allocable to the <b>current tax year</b> and tax years before the foreign corporation became a PFIC (pre-PFIC years). Enter these amounts on your income tax return as other income	16b	CURRENT
c	Enter the aggregate increases in tax (before credits) for <b>each tax year in your holding period</b> (other than the current tax year and pre-PFIC years). See instructions	16c	PRE-CURRENT
d	Foreign tax credit (see instructions)	16d	
e	Subtract line 16d from line 16c. Enter this amount on your income tax return as "additional tax." See instructions	16e	
f	Determine <b>interest on each net increase in tax</b> determined on line 16e using the rates and methods of section 6621. Enter the aggregate amount of interest here. See instructions	16f	INTEREST

**SCHEDULE 1**  
(Form 1040 or 1040-SR)

**Additional Income and Adjustments to Income**

Department of the Treasury  
Internal Revenue Service

▶ Attach to Form 1040 or 1040-SR.  
▶ Go to [www.irs.gov/Form1040](http://www.irs.gov/Form1040) for instructions and the latest information.

Name(s) shown on Form 1040 or 1040-SR

Your social security number

At any time during 2019, did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency?  Yes  No

**Part I Additional Income**

1	Taxable refunds, credits, or offsets of state and local income taxes	1	
2a	Alimony received	2a	
b	Date of original divorce or separation agreement (see instructions) ▶		
3	Business income or (loss). Attach Schedule C	3	
4	Other gains or (losses). Attach Form 4797	4	
5	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	5	
6	Farm income or (loss). Attach Schedule F	6	
7	Unemployment compensation	7	
8	<b>Other income.</b> List type and amount from Form 8621, Part V, Line 16b	8	CURRENT YR
9	Combine lines 1 through 8. Enter here and on Form 1040 or 1040-SR, line 7a	9	

12a	Tax (see instructions if any from Form(s) 1 <input type="checkbox"/> 8814 2 <input type="checkbox"/> 4972 3 <input checked="" type="checkbox"/> 1291TAX <input type="checkbox"/> 12a		
b	Add Schedule 2, line 3, and line 12a and enter the total	12b	
13a	Child tax credit or credit for other dependents	13a	
b	Add Schedule 3, line 7, and line 13a and enter the total	13b	
14	Subtract line 13b from line 12b. If zero or less, enter -0-	14	
15	Other taxes, including self-employment tax, from Schedule 2, line 10	15	
16	Add lines 14 and 15. This is your <b>total tax</b>	16	
17	Federal income tax withheld from Forms 1099	17	
18	Other payments and refundable credits		
a	Earned income credit (EIC)	18a	
b	Additional child tax credit. Attach Schedule 8812	18b	
c	American opportunity credit from Form 8863, line 8	18c	
d	Schedule 3, line 14	18d	
e	Add lines 18a through 18d. These are your <b>total other payments and refundable credits</b>	18e	
19	Add lines 17 and 18e. These are your <b>total payments</b>	19	

**SCHEDULE 2**  
(Form 1040 or 1040-SR)

**Additional Taxes**

Department of the Treasury  
Internal Revenue Service

▶ Attach to Form 1040 or 1040-SR.  
▶ Go to [www.irs.gov/Form1040](http://www.irs.gov/Form1040) for instructions and the latest information.

Name(s) shown on Form 1040 or 1040-SR

Your social security number

**Part I Tax**

1	Alternative minimum tax. Attach Form 6251	1	
2	Excess advance premium tax credit repayment. Attach Form 8962	2	
3	Add lines 1 and 2. Enter here and include on Form 1040 or 1040-SR, line 12b	3	

**Part II Other Taxes**

4	Self-employment tax. Attach Schedule SE	4	
5	Unreported social security and Medicare tax from Form 1099-a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919	5	
6	Additional tax on IRAs, other qualified retirement plans, and other tax-favored accounts. Attach Form 5329 if required	6	
7a	Household employment taxes. Attach Schedule H	7a	
b	Repayment of first-time homebuyer credit from Form 5405. Attach Form 5405 if required	7b	
8	<b>Taxes from:</b> a <input type="checkbox"/> Form 8959 b <input type="checkbox"/> Form 8960 c <input checked="" type="checkbox"/> Instructions; enter code(s) <b>1291INT</b>	8	
9	Section 965 net tax liability installment from Form 965-A	9	
10	Add lines 4 through 8. These are your <b>total other taxes</b> . Enter here and on Form 1040 or 1040-SR, line 15	10	







# Polling Question # 5

Under PFIC default rules, income recognition of undistributed income is deferred unless the taxpayer elects:

- A. to make a qualifying election to recognize a pro rata share of fund's investment income and capital gains annually.
- B. to treat fund shares held at year-end as though sold and recognize the resulting gain or loss.

A and B

A or B

# Form 8621

- Purpose of form:
  - Allow taxpayer to elect tax treatment (3 choices)
  - Compute tax due
- US taxpayer must file if:
  - Received distribution or sold PFIC shares (even if held indirectly through partnership or trust)
  - Making QEF or MTM election
  - Aggregate value > \$25K and required to make annual report [generally all except exempt organization or shareholder making MTM election]
- Must file separate *Form 8621* for each PFIC owned
- Attach to *Form 1040*
  - Mail independently if no 1040 filing requirement

# Exempt Filers

- Filing as NRA:
  - Dual residents of US & foreign country as per treaty provision → must submit *Form 8833* with *Form 1040-NR*
  - Dual status aliens until required to file as resident aliens → submit *Form 8621* with *Form 1040*
- Bona fide residents of Guam, Northern Mariana Islands & US Virgin Islands (but *not* residents of American Samoa & Puerto Rico)
- Short-term owners who held PFIC < 30 days during December/January
- Beneficiaries of foreign trust or pension if tax treaty specifies that PFIC earnings are not taxable until distribution
- De minimis exception if FMV < \$25K (single) or \$50K (married) on 12/31

# Example: Filing Requirement

## Facts

- US citizen owns 3 PFICS
  - FMV of each on 12/31:
    - A Corp: \$5,000
    - B Corp: \$10,000
    - C Corp: \$4,000
- } Aggregate value = \$19K
- Taxpayer filed timely elections to treat:
    - A Corp as QEF
    - B Corp as MTM
    - C Corp (no election)
  - Taxpayer received no distributions from C Corp during tax year

## Form 8621 filing reqs

- Must file *separate* forms for A Corp & B Corp (to claim elections)
- No filing req's for C Corp since aggregate FMV < \$25K de minimis & no distributions to report

# Form 8621: Annual Info

<b>Form 8621</b> (Rev. December 2018) Department of the Treasury Internal Revenue Service		<b>Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund</b> ▶ Go to <a href="http://www.irs.gov/Form8621">www.irs.gov/Form8621</a> for instructions and the latest information.		OMB No. 1545-1002  Attachment Sequence No. <b>69</b>	
Name of shareholder			Identifying number (see instructions)		
Number, street, and room or suite no. If a P.O. box, see instructions.			Shareholder tax year: calendar year 20 _____ or other tax year beginning _____, 20 _____ and ending _____, 20 _____		
City or town, state, and ZIP code or country					
Check type of shareholder filing the return: <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> S Corporation <input type="checkbox"/> Nongrantor Trust <input type="checkbox"/> Estate Check if any Excepted Specified Foreign Financial Assets are reported on this form. See instructions <input type="checkbox"/>					
Qualifying Insurance Corporation Election—If a shareholder of stock of a foreign corporation, elect to treat such stock as the stock of a Qualifying Insurance Corporation under the alternative facts and circumstances test within the meaning of section 1297(f)(2). See instructions <input type="checkbox"/>					
Name of foreign corporation, passive foreign investment company (PFIC), or qualified electing fund (QEF)			Employer identification number (if any)		
Address (Enter number, street, city or town, and country.)			Reference ID number (see instructions)		
			Tax year of foreign corporation, PFIC, or QEF: calendar year 20 _____ or other tax year beginning _____, 20 _____ and ending _____, 20 _____		

## Part I Summary of Annual Information (see instructions)

Provide the following information with respect to all shares of the PFIC held by the shareholder:

- Description of each class of shares held by the shareholder: \_\_\_\_\_  
 Check if shares jointly owned with spouse.
- Date shares acquired during the tax year, if applicable: \_\_\_\_\_
- Number of shares held at the end of the tax year: \_\_\_\_\_
- Value of shares held at the end of the tax year (check the appropriate box, if applicable):  
 (a)  \$0–50,000 (b)  \$50,001–100,000 (c)  \$100,001–150,000 (d)  \$150,001–200,000  
 (e) If more than \$200,000, list value: \_\_\_\_\_
- Type of PFIC and amount of any excess distribution or gain treated as an excess distribution under section 1291, inclusion under section 1293, and inclusion or deduction under section 1296 (check all boxes that apply):  
 (a)  Section 1291 \$ \_\_\_\_\_  
 (b)  Section 1293 (Qualified Electing Fund) \$ \_\_\_\_\_  
 (c)  Section 1296 (Mark to Market) \$ \_\_\_\_\_

# Form 8621: Elections

(c)  Section 1296 (Mark to Market) §

## Part II Elections (see instructions)

- A**  **Election To Treat the PFIC as a QEF.** I, a shareholder of a PFIC, elect to treat the PFIC as a QEF. Complete lines 6a through 7c of Part III.
- B**  **Election To Extend Time For Payment of Tax.** I, a shareholder of a QEF, elect to extend the time for payment of tax on the undistributed earnings and profits of the QEF until this election is terminated. Complete lines 8a through 9c of Part III to calculate the tax that may be deferred.
- Note:** If any portion of line 6a or line 7a of Part III is includible under section 951, you may not make this election. Also, see sections 1294(c) and 1294(f) and the related regulations for events that terminate this election.
- C**  **Election To Mark-to-Market PFIC Stock.** I, a shareholder of a PFIC, elect to mark-to-market the PFIC stock that is marketable within the meaning of section 1296(e). Complete Part IV.
- D**  **Deemed Sale Election.** I, a shareholder on the first day of a PFIC's first tax year as a QEF, elect to recognize gain on the deemed sale of my interest in the PFIC. Enter gain or loss on line 15f of Part V.
- E**  **Deemed Dividend Election.** I, a shareholder on the first day of a PFIC's first tax year as a QEF that is a controlled foreign corporation (CFC), elect to treat an amount equal to my share of the post-1986 earnings and profits of the CFC as an excess distribution. Enter this amount on line 15e of Part V. If the excess distribution is greater than zero, also complete line 16 of Part V.
- F**  **Election To Recognize Gain on Deemed Sale of PFIC.** I, a shareholder of a former PFIC or a PFIC to which section 1297(d) applies, elect to treat as an excess distribution the gain recognized on the deemed sale of my interest in the PFIC on the last day of its last tax year as a PFIC under section 1297(a). Enter gain on line 15f of Part V.
- G**  **Deemed Dividend Election With Respect to a Section 1297(e) PFIC.** I, a shareholder of a section 1297(e) PFIC, within the meaning of Regulations section 1.1297-3(a), elect to make a deemed dividend election with respect to the Section 1297(e) PFIC. My holding period in the stock of the Section 1297(e) PFIC includes the CFC qualification date, as defined in Regulations section 1.1297-3(d). Enter the excess distribution on line 15e, Part V. If the excess distribution is greater than zero, also complete line 16, Part V.
- H**  **Deemed Dividend Election With Respect to a Former PFIC.** I, a shareholder of a former PFIC, within the meaning of Regulations section 1.1298-3(a), elect to make a deemed dividend election with respect to the former PFIC. My holding period in the stock of the former PFIC includes the termination date, as defined in Regulations section 1.1298-3(d). Enter the excess distribution on line 15e, Part V. If the excess distribution is greater than zero, also complete line 16, Part V.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 64174H

Form **8621** (Rev. 12-2018)



# Form 8621: QEF Income

**Part III** **Income From a Qualified Electing Fund (QEF).** All QEF shareholders complete lines 6a through 7c. If you are making Election B, also complete lines 8a through 9c. See instructions.

6a	Enter your pro rata share of the ordinary earnings of the QEF . . . . .	6a		
b	Enter the portion of line 6a that is included in income under section 951 or that may be excluded under section 1293(g) . . . . .	6b		
c	Subtract line 6b from line 6a. Enter this amount on your tax return as ordinary income . . . . .			6c
7a	Enter your pro rata share of the total net capital gain of the QEF . . . . .	7a		
b	Enter the portion of line 7a that is included in income under section 951 or that may be excluded under section 1293(g) . . . . .	7b		
c	Subtract line 7b from line 7a. This amount is a net long-term capital gain. Enter this amount in Part II of the Schedule D used for your income tax return. See instructions . . . . .			7c
<b>Complete lines 8 and 9 only if you are making a section 1294 election (Election B) for the current tax year.</b>				
8a	Add lines 6c and 7c . . . . .			8a
b	Enter the total amount of cash and the fair market value of other property distributed or deemed distributed to you during the tax year of the QEF. See instructions . . . . .	8b		
c	Enter the portion of line 8a not already included in line 8b that is attributable to shares in the QEF that you disposed of, pledged, or otherwise transferred during the tax year . . . . .	8c		
d	Add lines 8b and 8c . . . . .			8d
e	Subtract line 8d from line 8a, and enter the difference (if zero or less, enter amount in brackets) . . . . .			8e
<b>Important:</b> If line 8e is greater than zero, and no portion of line 6a or 7a is includible in income under section 951, you may make Election B with respect to the amount on line 8e.				
9a	Enter the total tax for the tax year. See instructions . . . . .	9a		
b	Enter the total tax for the tax year determined without regard to the amount entered on line 8e . . . . .	9b		
c	Subtract line 9b from line 9a. This is the deferred tax, the time for payment of which is extended by making Election B. See instructions . . . . .			9c



# Form 8621: MTM Gain (Loss)

<b>Part IV</b> Gain or (Loss) From Mark-to-Market Election (see instructions)		
10a	Enter the fair market value of your PFIC stock at the end of the tax year . . . . .	10a
b	Enter your adjusted basis in the stock at the end of the tax year . . . . .	10b
c	Subtract line 10b from line 10a. If a gain, do not complete lines 11 and 12. Include this amount as ordinary income on your tax return. If a loss, go to line 11 . . . . .	10c
11	Enter any unreversed inclusions (as defined in section 1296(d)) . . . . .	11
12	Enter the loss from line 10c, but only to the extent of unreversed inclusions on line 11. Include this amount as an ordinary loss on your tax return . . . . .	12
13	<b>If you sold or otherwise disposed of any section 1296 stock (see instructions) during the tax year:</b>	
a	Enter the fair market value of the stock on the date of sale or disposition . . . . .	13a
b	Enter the adjusted basis of the stock on the date of sale or disposition . . . . .	13b
c	Subtract line 13b from line 13a. If a gain, do not complete line 14. Include this amount as ordinary income on your tax return. If a loss, go to line 14 . . . . .	13c
14a	Enter any unreversed inclusions (as defined in section 1296(d)) . . . . .	14a
b	Enter the loss from line 13c, but only to the extent of unreversed inclusions on line 14a. Include this amount as an ordinary loss on your tax return. If the loss on line 13c exceeds unreversed inclusions on line 14a, complete line 14c . . . . .	14b
c	Enter the amount by which the loss on line 13c exceeds unreversed inclusions on line 14a. Include this amount on your tax return according to the rules generally applicable for losses provided elsewhere in the Code and regulations . . . . .	14c

**Note:** See instructions in case of multiple sales or dispositions.

Form **8621** (Rev. 12-2018)



# Form 8621: Excess Distributions

**Part V** **Distributions From and Dispositions of Stock of a Section 1291 Fund** (see instructions)  
*Complete a separate Part V for each excess distribution and disposition. See instructions.*

15a	Enter your total distributions from the section 1291 fund during the current tax year with respect to the applicable stock. If the holding period of the stock began in the current tax year, see instructions . . . . .	15a	
b	Enter the total distributions (reduced by the portions of such distributions that were excess distributions but not included in income under section 1291(a)(1)(B)) made by the fund with respect to the applicable stock for each of the 3 years preceding the current tax year (or if shorter, the portion of the shareholder's holding period before the current tax year) . . . . .	15b	
c	Divide line 15b by 3.0. (See instructions if the number of preceding tax years is less than 3.) . . . . .	15c	
d	Multiply line 15c by 125% (1.25) . . . . .	15d	
e	Subtract line 15d from line 15a. This amount, if more than zero, is the excess distribution with respect to the applicable stock. If there is an excess distribution, complete line 16. If zero or less and you did not dispose of stock during the tax year, <b>do not</b> complete the rest of Part V. See instructions if you received more than one distribution during the current tax year. Also, see instructions for rules for reporting a nonexcess distribution on your income tax return . . . . .	15e	
f	Enter gain or loss from the disposition of stock of a section 1291 fund or former section 1291 fund. If a gain, complete line 16. If a loss, show it in brackets and <b>do not</b> complete line 16 . . . . .	15f	
16a	If there is a positive amount on line 15e or 15f (or both), attach a statement for each excess distribution and disposition. Show your holding period for each share of stock or block of shares held. Allocate the excess distribution or gain to each day in your holding period. Add all amounts that are allocated to days in each tax year.		
b	Enter the total of the amounts determined in line 16a that are allocable to the current tax year and tax years before the foreign corporation became a PFIC (pre-PFIC years). Enter these amounts on your income tax return as other income	16b	
c	Enter the aggregate increases in tax (before credits) for each tax year in your holding period (other than the current tax year and pre-PFIC years). See instructions . . . . .	16c	
d	Foreign tax credit (see instructions) . . . . .	16d	
e	Subtract line 16d from line 16c. Enter this amount on your income tax return as "additional tax." See instructions	16e	
f	Determine interest on each net increase in tax determined on line 16e using the rates and methods of section 6621. Enter the aggregate amount of interest here. See instructions . . . . .	16f	

# Form 8621: Prior Year Elections

**Part VI** Status of Prior Year Section 1294 Elections and Termination of Section 1294 Elections  
 Complete a separate column for each outstanding election.

Complete lines 17 through 20 to report the status of outstanding prior year section 1294 elections.							
		(i)	(ii)	(iii)	(iv)	(v)	(vi)
17	Tax year of outstanding election . . . . .						
18	Undistributed earnings to which the election relates . . . . .						
19	Deferred tax . . . . .						
20	Interest accrued on deferred tax (line 19) as of the filing date . . . . .						
Complete lines 21 through 24 only if a section 1294 election is terminated in the current year.							
21	Event terminating election . . . . .						
22	Earnings distributed or deemed distributed during the tax year . . . . .						
23	Deferred tax due with this return . . . . .						
24	Accrued interest due with this return. . . . .						
Complete lines 25 and 26 only if there is a partial termination of a section 1294 election in the current tax year.							
25	Deferred tax outstanding after partial termination of election. Subtract line 23 from line 19 . . . . .						
26	Interest accrued after partial termination of election. Subtract line 24 from line 20 . . . . .						

File annually if S1294 election was made to defer payment of tax due as per QEF election



## Polling Question # 6

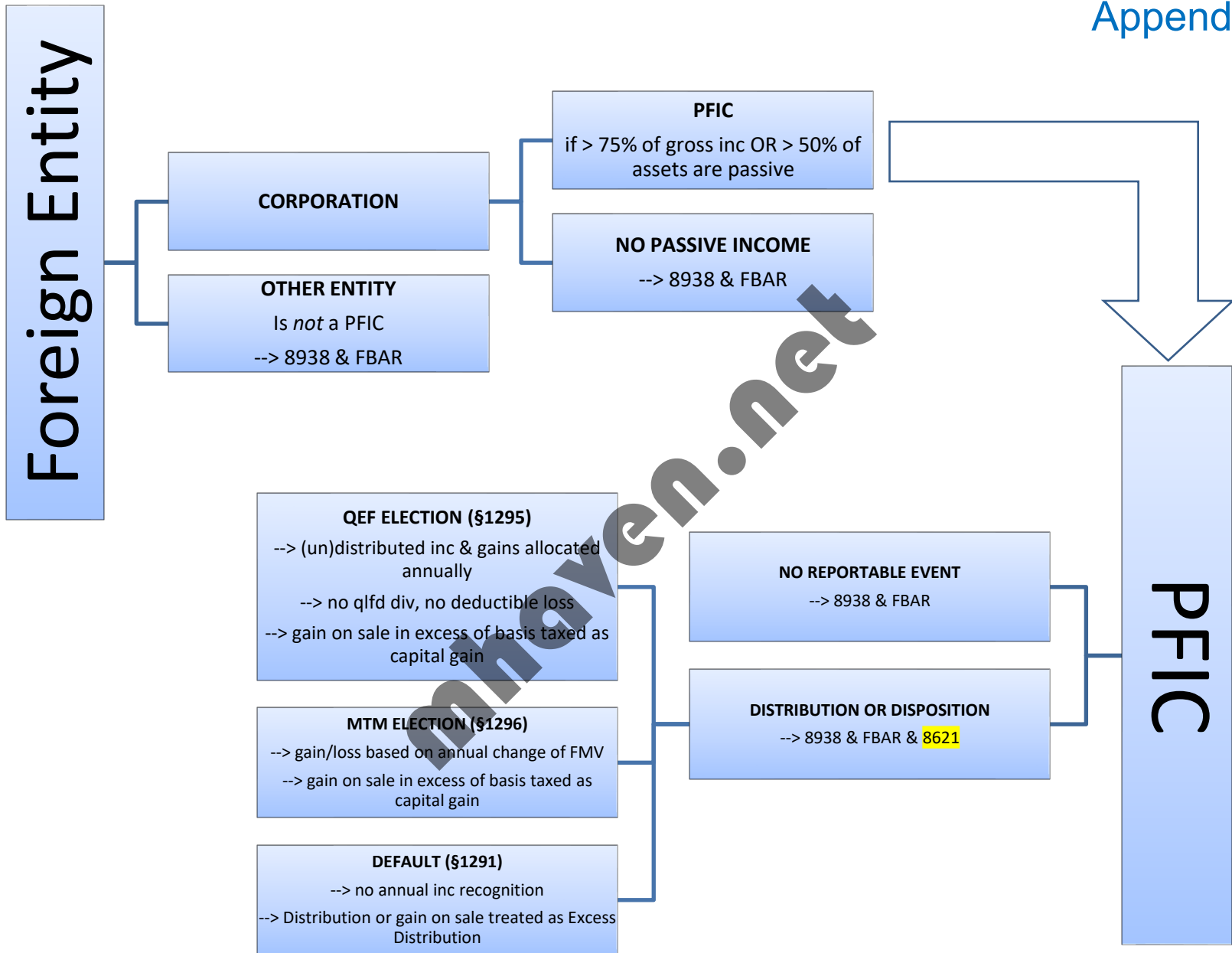
All of the following taxpayers are exempt from Form 8621 filing requirements except:

- Non-resident aliens
- Residents of Puerto Rico
- Shareholders who have held a PFIC for less than one month at year-end
- Taxpayers eligible to claim an applicable treaty-based position

# Non-compliance

- No monetary penalty
  - BUT costly consequences if no QEF or MTM election made → subject to Excess Distribution tax computation
- BUT failure to file suspends SOL of entire *Form 1040*
  - If reasonable cause, suspended SOL will apply only to *Form 8621*
- Penalties may be imposed on other FATCA forms (e.g. PFICs must be disclosed on *Form 8938* unless reported on 8621)









# Foreign Trusts

- Established to vest responsibility in trustees for protection & conservation of property
- Parties:
  - Grantor creates & funds entity
  - Trustee assumes fiduciary responsibility (may be grantor)
  - Beneficiary is ultimate recipient of trust assets
- Most familiar vehicle in US = Grantor (living or family) Trust
- Foreign Retirement Accounts (non-qualified as per ERISA)
  - Assets invested & preserved by Plan Administrator (= trustee)
  - For the benefit of employees (= beneficiaries)



# Two Types of Foreign Trusts

- Exempt
  - Must be organized in the US
  - Non-discriminatory
  - Contribution limits
  - Distribution restrictions
- Non-exempt
  - Are not created to comply with US regulations
  - Do not conform to US standards

By default, almost all foreign trusts – retirement accounts – are non-exempt



# Types of Non-exempt Trusts

- Depends on ownership of trust
  - Foreign Employees' Trust
  - Foreign Grantor Trust
- Grantor Trusts are subject to enhanced reporting req's
  - Must file *Forms 3520 & 3520-A*
  - May be required to file *Form 8621* if invested in PFIC (e.g. mutual funds)



ALL trusts – foreign retirement accounts – must  
file *Form 8938 & FinCEN 114*

# Employees' Trust

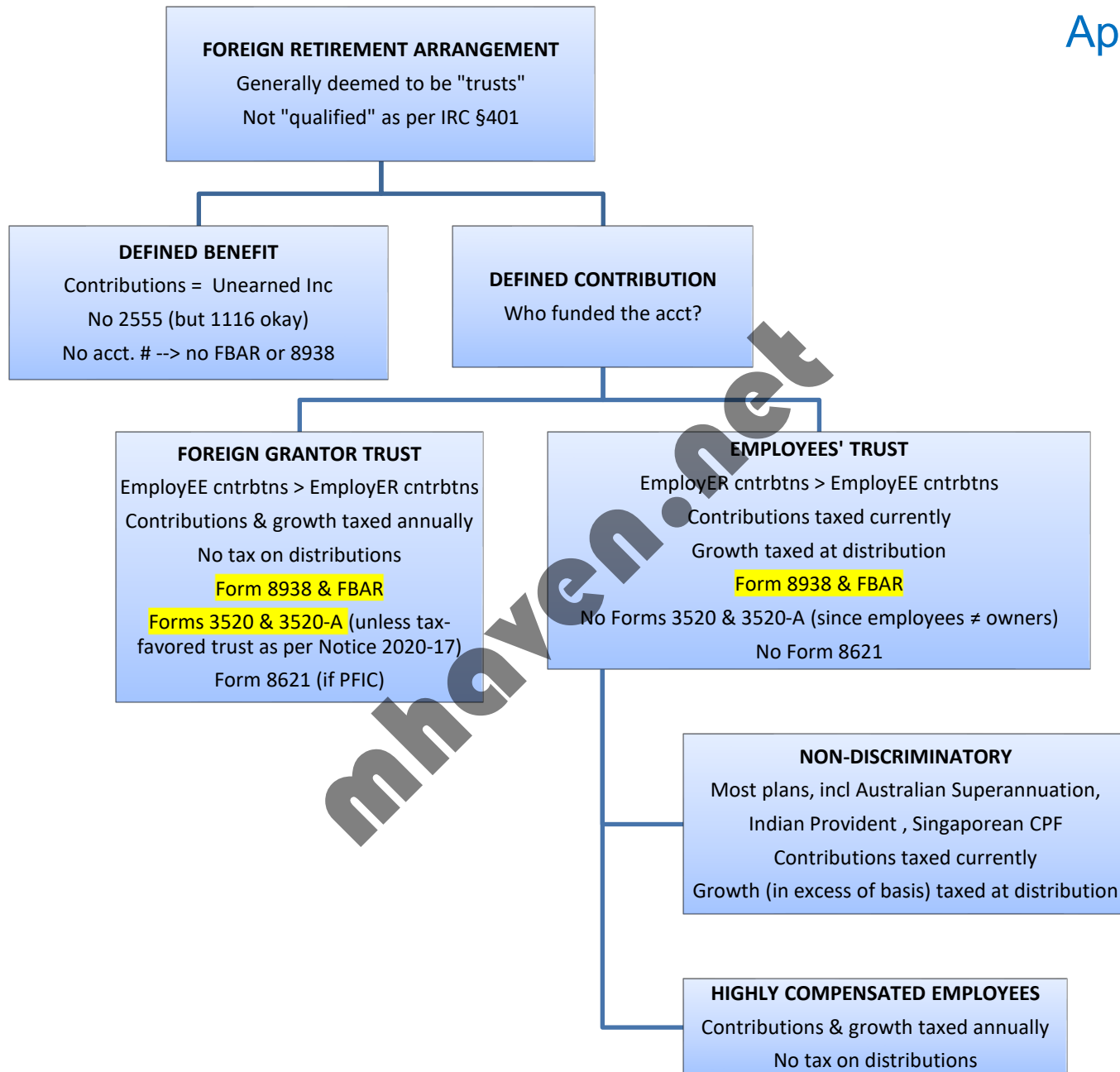
- Contributions by employER > employEE
  - Employee is *not* owner
- Plan must:
  - Be non-discriminatory
  - Not favor highly compensated employees
- Tax treatment
  - Employer contributions added to taxable wage income
  - Employee contributions are not tax-deductible
  - Income & growth tax-deferred
  - Distributions taxed @ LIFO: Deferred growth 1<sup>st</sup>, then tax-free return of basis
- No **Forms 3520 & 3520-A** req'd



# Foreign Grantor Trust

- Tax treatment
  - Income inclusion of all contributed amounts
  - Tax recognition of all (un)distributed earnings
  - Annual submission of *Forms 3520 & 3520-A*
  - *Form 8621* (if invested in PFIC)
  - *Form 8938 & FinCEN 114*
- Tax treaty (if applicable) may override standard rules

EVERY analysis of foreign retirement account should begin with search for applicable treaty provisions





# Polling Question # 7

Foreign retirement accounts are deemed to be trusts, potentially subject to Form 3520 filing requirements.

- True
- False

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# Form 3520

- US persons must report:
  - Creation of foreign trusts & all reportable events
  - Gifts & bequests in excess of \$100K received from abroad
- Reportable events:
  - Transfer of money or property to foreign trust [some exceptions]
  - Death of a US grantor of foreign trust
  - Conversion of domestic to foreign trust
  - Sales to foreign not that are not arms length
  - Receipt of (in)direct distribution
  - Receipt of non-taxable gift > \$16,815 [in 2021] from foreign corp or partnership
- Rules
  - File separate form for each foreign trust
  - Spouses may file joint form if same foreign trust
  - Gifts from related parties must be aggregated to determine if threshold met



# Gifts from Abroad

- No *Form 3520* required
  - Grandpa writes check for \$20K to granddaughter
  - \$100K filing threshold not met
- *Form 3520* required
  - Grandpa instructs trustee of foreign trust to send \$20K check
  - Granddaughter must file *Form 3520* [no threshold amount for trust distribution] and attach *Form 3520-A* (beneficiary stmt.)
  - Granddaughter must file substitute *Form 3520-A* if trustee does not file



# Filing Exceptions

- Most FMV transfers unless transfers of certain loan obligations, appreciated property when transferor does not recognize gain, & those involving related parties
- Transfers to & distributions from foreign trusts recognized as §501(c)(3) orgs & other exempt trusts
- Transfers to & distributions from Canadian registered retirement savings plans (RRSP) & Canadian registered retirement income funds (RRIF)
- Distributions from foreign trusts reported as taxable compensation



▶ See separate instructions.

# New Exception

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding) or a fee, shown on line 3,
- (b) an abatement of FUTA tax or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

- **Rev. Proc. 2020-17 (March 16, 2020)**

- (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2250.

- **No filing if "eligible individual"**

- US citizen or resident alien
- Tax compliant for 3 years
- Report all income/distributions from foreign trust

Name(s)	Your social security number
Address (number, street, and room or suite no.)	Spouse's social security number
City or town, state, and ZIP code	Employer identification number (EIN)
Name and address shown on return if different from above	Daytime telephone number

- **1 May request abatement for penalties previously assessed [Form 843] if eligible individual dealing with a tax-favored foreign trust**

No need to file *Forms 3520 & 3520-A* if otherwise compliant  Fee

- **4 Type of penalty. If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based.**
  - If non-compliant, must file omitted *Forms 1040 (1040X), 3520 & 3520-A* → eligible for future relief

# Tax-favored Foreign Trusts

- Established to provide pension & retirement benefits
  - Non-discriminatory
  - Limit contributions to percentage of plan participant's wages (max \$5K/year; \$1 million lifetime)
  - Restrict withdrawals
  - Provide annual reports to foreign regulators
- Established to provide medical, disability & educational benefits
  - Contributions < \$10,000/year (\$200K lifetime)
  - Restrict withdrawals
  - Tax-favored under local law
  - Provide annual reports to foreign regulators

Most foreign retirement accounts now exempt  
from 3520 & 3520-A filings

# Form 3520 Deadline & Penalties

- Individuals (or Decedents)
  - Due April 15th (plus extensions)
  - *Form 1040* extension applies to *Form 3520* but must check box 1k on Page 1 to cross-reference
- Must file *Form 3520* whether or not income tax return is due
- *Form 3520* is mailed separately; not submitted with *Form 1040*
- Penalties
  - Failure to file = 35% of gross reportable amount (min. \$10K)
  - Failure to report gift = 5% per month of the value of gift (max. 25%)
  - No SOL until filed

# Form 3520: Who is Filer?

Form <b>3520</b> Department of the Treasury Internal Revenue Service	<b>Annual Return To Report Transactions With                  Foreign Trusts and Receipt of Certain Foreign Gifts</b> ▶ Go to <a href="http://www.irs.gov/Form3520">www.irs.gov/Form3520</a> for instructions and the latest information.	OMB No. 1545-0159 <div style="font-size: 2em; font-weight: bold; text-align: center;">2019</div>
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**Note:** All information must be in English. Show all amounts in U.S. dollars. File a **separate** Form 3520 for **each** foreign trust.

For calendar year 2019, or tax year beginning \_\_\_\_\_, 2019, ending \_\_\_\_\_, 20

**A** Check appropriate boxes:  Initial return  Initial return (extension filed)  Final return  Amended return

**B** Check box that applies to person filing return:  Individual  Partnership  Corporation  Trust  Executor

**C** Check if any excepted specified foreign financial assets are reported on this form (see instructions) \_\_\_\_\_

**Check all applicable boxes.**

- (a) You are a U.S. transferor who, directly or indirectly, transferred money or other property during the current tax year to a foreign trust, (b) You are a U.S. person who (1) during the current tax year, transferred property (including cash) to a related foreign trust (or a person related to the trust) in exchange for an obligation, or (2) holds a qualified obligation from the trust that is currently outstanding, or (c) You are the executor of the estate of a U.S. decedent and (1) the decedent made a transfer to a foreign trust by reason of death, (2) the decedent was treated as the owner of any portion of a foreign trust immediately prior to death, or (3) the decedent's estate included any portion of the assets of a foreign trust. **Complete all applicable identifying information requested below and Part I of the form** and see the instructions for Part I.
- You are a U.S. owner of all or any portion of a foreign trust at any time during the tax year. **Complete all applicable identifying information requested below and Part II of the form** and see the instructions for Part II. You may also need to complete lines 15 through 18 of Part I if you answered "No" to line 3 and Part III. See the instructions for Parts I and III.
- (a) You are a U.S. person (including a U.S. owner) or an executor of the estate of a U.S. person who, during the current tax year, received, directly or indirectly, a distribution from a foreign trust, (b) You are a U.S. person who is a U.S. owner or beneficiary of a foreign trust and in the current tax year, you or a U.S. person related to you received (1) a loan of cash or marketable securities, directly or indirectly, from such foreign trust, or (2) the uncompensated use of trust property, or (c) You are a U.S. person who is a U.S. owner or beneficiary of a foreign trust and in the current tax year such foreign trust holds an outstanding qualified obligation of yours or a U.S. person related to you. **Complete all applicable identifying information requested below and Part III of the form** and see the instructions for Part III.
- You are a U.S. person who, during the current tax year, received certain gifts or bequests from a foreign person. **Complete all applicable identifying information requested below and Part IV of the form** and see the instructions for Part IV.

<b>1a</b> Name of U.S. person(s) with respect to whom this Form 3520 is being filed (see instructions)			<b>b</b> Identification number	
<b>c</b> Number, street, and room or suite no. (If a P.O. box, see instructions)			<b>d</b> Spouse's Identification number	
<b>e</b> City or town	<b>f</b> State or province	<b>g</b> ZIP or foreign postal code	<b>h</b> Country	
<b>i</b> Check the box if you are married and filing a joint 2019 income tax return, and you are filing a joint Form 3520 with your spouse. <input type="checkbox"/>				
<b>j</b> Service center where U.S. person's tax return is filed _____ ▶				
<b>k</b> If an extension was requested for the tax return, check this box <input type="checkbox"/> and enter the form number of the tax return to be filed. ▶ _____				
<b>2a</b> Name of foreign trust (if applicable)			<b>b(1)</b> Employer identification number (if any)	

# Form 3520: Transfers TO Foreign Trust

Form 3520 (2019)

Page **2**

<b>Part I Transfers by U.S. Persons to a Foreign Trust During the Current Tax Year</b> (see instructions)				
<b>5a</b> Name of trust creator	<b>b</b> Address		<b>c</b> Identification number (if any)	
<b>6a</b> Country code of country where trust was created	<b>b</b> Country code of country whose law governs the trust	<b>c</b> Date trust was created		
<b>7a</b> Will any person (other than the foreign trust) be treated as the owner of the transferred assets after the transfer? <input type="checkbox"/> Yes <input type="checkbox"/> No				
<b>b</b> Name of all foreign trust owners	(i) Address	(iii) Country of residence	(iv) Identification number, if any	(v) Relevant Code section
<b>8</b> Was the transfer a completed gift or bequest? If "Yes," see instructions <input type="checkbox"/> Yes <input type="checkbox"/> No				
<b>9a</b> Now or at any time in the future, can any part of the income or corpus of the trust benefit any U.S. beneficiary? <input type="checkbox"/> Yes <input type="checkbox"/> No				
<b>b</b> If "No," could the trust be revised or amended to benefit a U.S. beneficiary? <input type="checkbox"/> Yes <input type="checkbox"/> No				
<b>10</b> Reserved <input type="checkbox"/> Yes <input type="checkbox"/> No				

**Schedule A—Obligations of a Related Trust** (see instructions)

<b>11a</b> During the current tax year, did you transfer property (including cash) to a related foreign trust in exchange for an obligation of the trust or an obligation of a person related to the trust (see instructions)? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," complete the rest of Schedule A, as applicable. If "No," go to Schedule B.				
<b>b</b> Were any of the obligations you received (with respect to a transfer described in line 11a above) qualified obligations? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," complete the rest of Schedule A and attach a copy of each loan document entered into with respect to each qualified obligation reported on line 11(b). If these documents have been attached to a Form 3520 filed within the previous 3 years, attach only relevant updates. If "No," go to Schedule B.				
(i) Date of transfer giving rise to obligation	(ii) Maximum term	(iii) Yield to maturity	(iv) FMV of obligation	
<b>12</b> With respect to each qualified obligation you reported on line 11b: Do you agree to extend the period of assessment of any income or transfer tax attributable to the transfer, and any consequential income tax changes for each year that the obligation is outstanding, to a date 3 years after the maturity date of the obligation? <input type="checkbox"/> Yes <input type="checkbox"/> No				
<b>Note:</b> You have the right to refuse to extend the period of limitations or limit this extension to a mutually agreed-upon issue(s) or mutually agreed-upon period of time. Generally, if you refuse to extend the period of limitations with respect to each qualified obligation you reported on line 11b, then such obligation is not a qualified obligation and you cannot check "Yes" to the question on line 11b.				

# Form 3520: Distributions FROM Foreign Trust

23 Enter the gross value of the portion of the foreign trust that you are treated as owning at the end of your tax year ▶ 0

## Part III Distributions to a U.S. Person From a Foreign Trust During the Current Tax Year (see instructions)

**Note:** If you received an amount from a portion of a foreign trust of which you are treated as the owner, only complete lines 24 and 27.

24 Cash amounts or FMV of property received, directly or indirectly, during your current tax year, from the foreign trust (exclude loans and uncompensated use of trust property included on line 25).

(a) Date of distribution	(b) Description of property received	(c) FMV of property received (determined on date of distribution)	(d) Description of property transferred, (if any)	(e) FMV of property transferred	(f) Excess of column (c) over column (e)
<b>Totals</b> .....					\$

25 During your current tax year, did you (or a person related to you) receive a loan or uncompensated use of trust property from a related foreign trust (including an extension of credit upon the purchase of property from the trust)?  Yes  No  
If "Yes," complete columns (a) through (g) below for each such loan or use of trust property.

**Note:** See instructions for additional information, including how to complete columns (a) through (g) for use of trust property.

(a) FMV of loan proceeds or property	(b) Date of original transaction	(c) Maximum term of repayment of obligation	(d) Interest rate of obligation	(e) Is the obligation a "qualified obligation?"		(f) FMV of qualified obligation	(g) Amount treated as distribution from the trust (subtract column (f) from column (a))
				Yes	No		
<b>Total</b> .....							\$



# Form 3520: Tax Due on Distributions Received

Schedule A—Default Calculation of Trust Distributions (see instructions)	
31	Enter amount from line 27
32	Number of years the trust has been a foreign trust (see instructions)
33	Enter total distributions received from the foreign trust during the 3 preceding tax years (or during the number of years the trust has been a foreign trust, if fewer than 3)
34	Multiply line 33 by 1.25
35	Average distribution. Divide line 34 by 3 (or the number of years the trust has been a foreign trust, if fewer than 3) and enter the result
36	Amount treated as ordinary income earned in the current year. Enter the smaller of line 31 or line 35
37	Amount treated as accumulation distribution. Subtract line 36 from line 31. If -0-, do not complete the rest of Part III
38	Applicable number of years of trust. Divide line 32 by 2 and enter the result here
Schedule B—Actual Calculation of Trust Distributions (see instructions)	
39	Enter amount from line 27
40a	Amount treated as ordinary income in the current tax year
b	Qualified dividends
41a	Amount treated as accumulation distribution. If -0-, do not complete Schedule C, Part III
b	Amount of line 41a that is tax exempt
42a	Amount treated as net short-term capital gain in the current tax year
b	Amount treated as net long-term capital gain in the current tax year
c	28% rate gain
d	Unrecaptured section 1250 gain
43	Amount treated as distribution from trust corpus
44	Enter any other distributed amount received from the foreign trust not included on lines 40a, 41a, 42a, 42b, and 43 (attach explanation)
45	Amount of foreign trust's aggregate undistributed net income
46	Amount of foreign trust's weighted undistributed net income
47	Applicable number of years of trust. Divide line 46 by line 45 and enter the result here
Schedule C—Calculation of Interest Charge (see instructions)	
48	Enter accumulation distribution from line 37 or 41a, as applicable
49	Enter tax on total accumulation distribution from line 28 of Form 4970 (attach Form 4970—see instructions)
50	Enter applicable number of years of foreign trust from line 38 or 47, as applicable (round to nearest half-year)
51	Combined interest rate imposed on the total accumulation distribution (see instructions)
52	Interest charge. Multiply the amount on line 49 by the combined interest rate on line 51
53	Tax attributable to accumulation distributions. Add lines 49 and 52. Enter here and as "additional tax" on your income tax return

**Transfer to Form 1040,  
Schedule 2, Line 8 "ADT"**

Form 3520 (2019)

# Form 3520: Gifts & Bequests

Form 3520 (2019)

Page **6**

**Part IV** **U.S. Recipients of Gifts or Bequests Received** During the Current Tax Year From Foreign Persons  
(see instructions)

**54** During your current tax year, did you receive more than \$100,000 that you treated as gifts or bequests from a nonresident alien (including a distribution received from a domestic trust treated as owned by a foreign person) or a foreign estate? See instructions for special rules regarding related donors  Yes  No  
If "Yes," complete columns (a) through (c) with respect to each such gift or bequest in excess of \$5,000. If more space is needed, attach a statement.

(a) Date of gift or bequest	(b) Description of property received	(c) FMV of property received
<b>Total</b> .....		\$

**55** During your current tax year, did you receive more than \$16,388 that you treated as gifts from a foreign corporation or a foreign partnership (including a distribution received from a domestic trust treated as owned by a foreign person)? See instructions regarding related donors  Yes  No  
If "Yes," complete columns (a) through (g) with respect to each such gift. If more space is needed, attach a statement.

(a) Date of gift	(b) Name of foreign donor	(c) Address of foreign donor	(d) Identification number, if any
(e) Check the box that applies to the foreign donor		(f) Description of property received	(g) FMV of property received
Corporation	Partnership		





# Polling Question # 8

Form 3520 is due 4/15 and must be filed:

- With Form 1040.
- Separately from Form 1040.

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# Foreign Trust Filing Req.

- Info return required to be filed if trust has US owner
  - Income Statement
  - Balance Sheet
  - Owner Statement (incl income allocable to US owner → reportable on *Form 1040*)
  - Beneficiary Statement if (in)direct distribution received
- Should be filed by trustee of foreign trust
  - If not filed, US owner must prepare substitute *Form 3520-A* “to the best of his ability”
- Exception for tax-favored foreign trusts applies [Rev. Proc. 2020-17]



# Form 3520-A Deadline & Penalties

- Due March 15<sup>th</sup>
  - Use *Form 7004* to extend for 6 months
  - COVID-19 extension does *not* apply
- Must provide Statements (pp. 3 – 5) to Owners & Beneficiaries by 3/15
  - If beneficiary is also an owner, only Owner's Stmt must be furnished
  - Owner/Bene must attach stmt to his *Form 3520* to include reportable income
- Penalties
  - Failure to file 3520-A = 5% of gross value of trust assets at year-end (min \$10K)
  - Failure to file Owner Stmt = 5% of US owner's allocable assets (min \$10K)
  - Additional penalty for every 90-day period after IRS notification of non-compliance
  - If US owner subject to accuracy-related penalty on *Form 1040 due* attributable to foreign trust asset, penalty may be increased from 20 to 40%
  - Possible criminal penalties

# Form 3520-A: Trust Info

Form <b>3520-A</b> Department of the Treasury Internal Revenue Service	<b>Annual Information Return of Foreign Trust With a U.S. Owner</b> (Under section 6048(b)) ▶ Go to <a href="http://www.irs.gov/Form3520A">www.irs.gov/Form3520A</a> for instructions and the latest information.	OMB No. 1545-0159  <span style="font-size: 2em; font-weight: bold;">2019</span>
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**Note:** All information must be in English. Show all amounts in U.S. dollars.

For calendar year 2019, or tax year beginning \_\_\_\_\_, 2019, ending \_\_\_\_\_, 20\_\_.

Check appropriate boxes.  Initial return  Final return  Amended return

Check if any excepted specified foreign financial assets are reported on this form (see instructions)

**Part I General Information** (see instructions)

<b>1a</b> Name of foreign trust			<b>b(1)</b> Employer identification number	
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)			<b>b(2)</b> Reference ID number (see instructions)	
<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or foreign postal code	<b>g</b> Country	

**2** Did the foreign trust appoint a U.S. agent (defined in the instructions) who can provide the IRS with all the relevant trust information?  Yes  No

If "Yes," skip lines 2a through 2e and go to line 3.  
 If "No," you are required to attach a copy of all trust documents as indicated below. If these documents have been attached to a Form 3520-A filed within the previous 3 years, attach only relevant updates.

Have you attached a copy of:	Yes	No	Attached Previously	Year Attached
<b>a</b> Summary of all written and oral agreements and understandings relating to the trust?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<b>b</b> The trust instrument?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<b>c</b> Memoranda or letters of wishes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<b>d</b> Subsequent variances to original trust documents?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<b>e</b> Other trust documents?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

<b>3a</b> Name of U.S. agent			<b>b</b> Identification number	
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)				
<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country	

<b>4a</b> Name of trustee			<b>b</b> Identification number, if any	
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)				

# Form 3520-A: Income Statement

Form 3520-A (2019)

Page 2

## Part II Foreign Trust Income Statement

Enter totals from books and records of foreign trust (see instructions).

Income	1	Interest . . . . .		
	2	Dividends . . . . .		
	3	Gross rents and royalties . . . . .		
	4	Income (loss) from partnerships and fiduciaries . . . . .		
	5	Capital gains:		
	a	Net short-term capital gain (loss) . . . . .		
	b	Net long-term capital gain (loss) . . . . .		
	6	Ordinary gains (losses) . . . . .		
7	Other income (attach statement) . . . . .			
8	Total income (add lines 1 through 7) . . . . .			
Expenses	9	Interest expense . . . . .		
	10a	Foreign taxes (attach statement) . . . . .		
	b	State and local taxes . . . . .		
	11	Amortization and depreciation (depletion) . . . . .		
	12	Trustee and advisor fees . . . . .		
	13	Charitable contributions . . . . .		
	14	Other expenses (attach statement) . . . . .		
15	Total expenses (add lines 9 through 14) . . . . .			
16	Net income (loss) (subtract line 15 from line 8) . . . . .			
17a	Enter the fair market value (FMV) of total distributions (directly or indirectly) from the trust to all persons, whether U.S. or foreign. See instructions for definitions of distribution and person . . . . . ▶			
b	Distributions to U.S. owners:			
	(i) Name of owner	(ii) Identification number	(iii) Date of distribution	(iv) FMV on date of distribution
c	Distributions to U.S. beneficiaries:			
	(i) Name of beneficiary	(ii) Identification number	(iii) Date of distribution	(iv) FMV on date of distribution

# Form 3520-A: Balance Sheet

<b>Part III Foreign Trust Balance Sheet</b>		<b>Beginning of Tax Year</b>		<b>End of Tax Year</b>	
		<b>(a)</b>	<b>(b)</b>	<b>(c)</b>	<b>(d)</b>
<b>Assets</b>					
1	Cash . . . . .				
2	Accounts receivable . . . . .				
3	Mortgages and notes receivable . . . . .				
4	Inventories . . . . .				
5	Government obligations . . . . .				
6	Other marketable securities . . . . .				
7	Other nonmarketable securities . . . . .				
8a	Depreciable (depletable) assets . . . . .				
b	Less: accumulated depreciation (depletion)				
9	Real property . . . . .				
10	Other assets (attach statement) . . . . .				
11	<b>Total assets</b> . . . . .				
<b>Liabilities</b>					
12	Accounts payable . . . . .				
13	Contributions, gifts, grants, etc., payable . . . . .				
14	Mortgages and notes payable . . . . .				
15	Other liabilities (attach statement) . . . . .				
16	<b>Total liabilities</b> . . . . .				
<b>Net Worth</b>					
17	Contributions to trust corpus . . . . .				
18	Accumulated trust income . . . . .				
19	Other (attach statement) . . . . .				
20	<b>Total net worth (add lines 17 through 19)</b> . . . . .				
21	<b>Total liabilities and net worth (add lines 16 and 20)</b>				

Form **3520-A** (2019)

# Form 3520-A: Owner Statement

Form 3520-A (2019)

Form 3520-A (2019)

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## 2019 Foreign Grantor Trust Owner Statement

**Important:** Trustee must prepare a separate statement for each U.S. owner and include a copy required to send to each U.S. owner a copy of the owner's statement. U.S. owner

## 2019 Statement of Foreign Trust Income Attributable to U.S. Owner (see instructions)

Report each item on the proper form or schedule of your tax return.

**1a** Name of foreign trust

**c** Number, street, and room or suite no. (if a P.O. box, see instructions)

**d** City or town      **e** State or province      **f** ZIP or postal code

**2** Did the foreign trust appoint a U.S. agent (defined in the instructions) who can provide the IR? If "Yes," complete lines 3a through 3g.

**3a** Name of U.S. agent

**c** Number, street, and room or suite no. (if a P.O. box, see instructions)

**d** City or town      **e** State or province      **f** ZIP or postal code

**4a** Name of trustee

**c** Number, street, and room or suite no. (if a P.O. box, see instructions)

**d** City or town      **e** State or province      **f** ZIP or postal code

**5** The first and last day of the tax year of the foreign trust to which this statement relates

**6a** Name of U.S. owner

**c** Number, street, and room or suite no. (if a P.O. box, see instructions)

**d** City or town      **e** State or province      **f** ZIP or postal code      **g** Country

**h** Service Center where U.S. owner files its income tax returns ▶

**7** Attach an explanation of the facts and law (including the section of the Internal Revenue Code that establishes that the foreign trust (or portion of the foreign trust) is treated for U.S. tax purposes as owned by the U.S. person.

**8** If the trust did not appoint a U.S. agent, list the trust documents attached to Form 3520-A (see instructions).

**9** Gross value of the portion of the trust treated as owned by the U.S. owner \$

**10** Cash amounts or FMV of property distributed, directly or indirectly, during the foreign trust's tax year, from the foreign trust (exclude distributions to the U.S. owner).

Income	<b>1a</b> Taxable interest	
	<b>b</b> Tax-exempt interest ▶	
	<b>2a</b> Total ordinary dividends	
	<b>b</b> Qualified dividends ▶	
	<b>3</b> Gross rents and royalties	
	<b>4</b> Income from partnerships and fiduciaries	
	<b>5</b> Capital gains (losses)	
	<b>6</b> Ordinary gains (losses)	
<b>7</b> Other income (attach statement)		
<b>8</b> Total income. Add lines 1 through 7		
Expenses	<b>9</b> Interest expense	
	<b>10a</b> Foreign taxes (attach statement)	
	<b>b</b> State and local taxes	
	<b>11</b> Amortization and depreciation (depletion)	
	<b>12</b> Trustee and advisor fees	
	<b>13</b> Charitable contributions	
	<b>14</b> Other expenses (attach statement)	
<b>15</b> Total expenses. Add lines 9 through 14		

**Transfer to Form 1040**

Under penalties of perjury, I declare that I have examined this return, including any accompanying reports, schedules, or statements, and to the best of my knowledge and belief, it is true, correct, and complete.

**To Form 3520, Part II**

**Part II U.S. Owner of a Foreign Trust (see instructions)**

**20** Name of all foreign trust owners (a)

**(b)** Address

**(c)** Country of tax residence

**(d)** Identification number, if any

**(e)** Relevant Code section

**21** Country code of country where foreign trust was created (a)

**(b)** Country code of country whose law governs the foreign trust

**(c)** Date foreign trust was created

**22** Did the foreign trust file Form 3520-A for the current year? If "Yes," attach the Foreign Grantor Trust Owner Statement you received from the foreign trust. If "No," to the best of your ability, complete and attach a substitute Form 3520-A for the foreign trust.

Yes  No





# Form 3520-A: Bene Statement

## 2019 Foreign Grantor Trust Beneficiary Statement

**Important:** Trustee must prepare a separate statement for each U.S. beneficiary that received a distribution from the trust during the tax year and include a copy of each statement with Form 3520-A. Trustee is also required to send to each such beneficiary a copy of the beneficiary's statement. Each U.S. beneficiary must attach a copy of its statement to its Form 3520.

1a Name of foreign trust			b(1) Employer identification number	
c Number, street, and room or suite no. (if a P.O. box, see instructions)			b(2) Reference ID number (see instructions)	
d City or town	e State or province	f ZIP or foreign postal code	g Country	

2 Did the foreign trust appoint a U.S. agent (defined in the instructions) who can provide the IRS with all relevant trust information?  Yes  No  
 If "Yes," complete lines 3a through 3g.  
 If "No," do you agree that either the IRS or the U.S. beneficiary can inspect and copy the trust's permanent books of account, records, and such other documents that are necessary to establish that the trust should be treated for U.S. tax purposes as owned by another person?  Yes  No

3a Name of U.S. agent

b Identification number (if you are treated as owing at the end of your tax year)

c Number, street, and room or suite no. (if a P.O. box, see instructions)

d City or town

e State or province

f ZIP or postal code

4a Name of trustee

c Number, street, and room or suite no. (if a P.O. box, see instructions)

d City or town

e State or province

5 The first and last day of the tax year of the foreign trust to which you are treated as owing at the end of your tax year

6a Name of U.S. beneficiary

c Number, street, and room or suite no. (if a P.O. box, see instructions)

d City or town

e State or province

f ZIP or foreign postal code

g Country

7 Cash amounts or FMV of property that during the current tax year were (1) distributed directly or indirectly to a U.S. person whether or not the U.S. person is designated as a beneficiary of the trust, (2) loaned (exclude loans treated as qualified obligations) directly or indirectly to the U.S. person who is a beneficiary of the trust or a U.S. person related to that U.S. person, or (3) used by the U.S. person who is a beneficiary of the trust or a U.S. person related to that U.S. person without compensating the trust for the FMV of the use of the property within a reasonable period of time. (See the Instructions for Part III of Form 3520 for U.S. tax treatment of these amounts).

(a) Date of distribution	(b) Description of property distributed	(c) FMV of property distributed (determined on date of distribution)	(d) Description of property transferred, if any	(e) FMV of property transferred	(f) Excess of column (c) over column (e)

**Transfer to Form 3520, Part III**

**Part III Distributions to a U.S. Person From a Foreign Trust** (see instructions)

Note: If you received an amount from a portion of a foreign trust of which you are treated as the owner, only complete lines 24 and 27.

24 Enter the gross value of the portion of the foreign trust that you are treated as owing at the end of your tax year

(a) Date of distribution	(b) Description of property received	(c) FMV of property received (determined on date of distribution)	(d) Description of property transferred, if any	(e) FMV of property transferred	(f) Excess of column (c) over column (e)

**Transfer from Form 3520-A**





# Compliance comes at a steep price

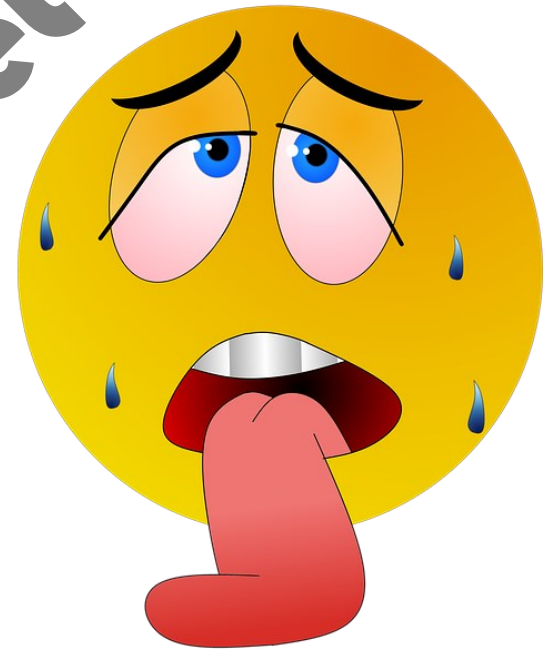
- Costs
  - Tax preparation
  - Legal fees
  - Penalties
  - Relief programs (but *not* amnesty)
- Taxes due if high-income US taxpayer buys mutual funds & holds for 13 months
  - If domestic fund: Tax on *distributed* earnings + 20% rate on gain on sale
  - If foreign fund: Tax on *(un)distributed* earnings + 37% on gain on sale

Think hard before investing abroad

# Don't try this at home

- *Form 8621*
  - 4 pages
  - 13 pages of instructions
  - Average prep time = 37 hours
- *Form 3520*
  - 6 pages
  - 12 pages of instructions
  - Average prep time = 49 hours
- *Form 3520-A*
  - 5 pages
  - 7 pages of instructions
  - Average prep time = 40 hours

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