26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also: Part I, Sections 6048 and 6677)

Rev. Proc. 2020-17

SECTION 1. PURPOSE

This revenue procedure provides an exemption from the information reporting requirements under section 6048 of the Internal Revenue Code for certain U.S. citizen and resident individuals (U.S. individuals) with respect to their transactions with, and ownership of, certain tax-favored foreign retirement trusts and certain tax-favored foreign nonretirement savings trusts, as described in sections 5.03 and 5.04 of this revenue procedure (collectively, applicable tax-favored foreign trusts). Only eligible individuals described in section 5.02 of this revenue procedure (generally U.S. individuals who have been compliant with respect to their income tax obligations related to such trusts) may rely on this revenue procedure.

In addition, this revenue procedure establishes procedures for eligible individuals to request abatement of penalties that have been assessed or a refund of penalties that have been paid pursuant to section 6677 for the individuals' failure to comply with the information reporting requirements of section 6048 with respect to an applicable tax-favored foreign trust. Eligible individuals may request relief from section 6677 penalties, subject to the limitations of sections 6402 and 6511, in accordance with section 6 of this revenue procedure.

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations that would modify the requirements under section 6048 to exclude eligible individuals' transactions with, or ownership of, these applicable tax-favored foreign trusts from information reporting. The Treasury Department and the IRS request comments about these and other similar types of foreign trusts that should be considered for an exemption from section 6048 reporting.

SECTION 2. BACKGROUND

.01 Section 6048, enacted in 1996, generally requires annual information reporting of a United States person's transfers of money or other property to, ownership of, and distributions from, foreign trusts, and section 6677 imposes penalties on United States persons for failing to comply with section 6048. As relevant here, section 6048(a)(3)(B)(ii) provides an exception from reporting with respect to transfers to foreign compensatory trusts described in section 402(b), 404(a)(4), or 404A. In addition, section 6048(d)(4) authorizes the Secretary to suspend or modify any requirement under section 6048 if the United States has no significant tax interest in obtaining the required information. The Treasury Department and the IRS have previously issued guidance providing that reporting is not required under section 6048(c) with respect to distributions from certain foreign compensatory trusts, provided that the recipient of the distribution reports the distribution as compensation income on an applicable federal income tax return, and that information reporting under section 6048(a) through (c) is not required with respect to certain Canadian retirement plans. See Section V of Notice 97-34, 1997-1 C.B. 422; Rev. Proc. 2014-55, 2014-44 I.R.B. 753. Section 6048 information reporting is provided on Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner (Under section 6048(b))*.

.02 Section 6038D, enacted in 2010, and the regulations thereunder generally require a specified person, which includes a U.S. citizen or resident alien, to report any interest in a specified foreign financial asset provided that the aggregate value of all such assets exceeds certain thresholds. See §1.6038D-2(a). Section 6038D(d) imposes a penalty for failing to comply. A specified foreign financial asset includes interests in certain foreign retirement, pension, and non-retirement savings funds or accounts. See §§1.6038D-3. Section 6038D information reporting is provided on Form 8938, *Statement of Specified Foreign Financial Assets*. A specified person who is required to report information under section 6038D on Form 8938 may also be required to report similar identifying information under section 6048 on Form 3520 or Form 3520-A. For more information about section 6038D information reporting, see https://www.irs.gov/businesses/corporations/basic-questions-and-answers-on-form-8938.

SECTION 3. INFORMATION REPORTING UNDER SECTION 6048 WITH RESPECT TO APPLICABLE TAX-FAVORED FOREIGN TRUSTS

The Treasury Department and the IRS have determined that, because applicable tax-favored foreign trusts generally are subject to written restrictions, such as contribution limitations, conditions for withdrawal, and information reporting, which are imposed under the laws of the country in which the trust is established, and because U.S. individuals with an interest in these trusts may be required under section 6038D to separately report information about their interests in accounts held by, or through, these trusts, it would be appropriate to exempt U.S. individuals from the requirement to provide information about these trusts under section 6048. Accordingly, pursuant to the authority granted under section 6048(d)(4), the Treasury Department and the IRS are exempting from section 6048 information reporting an eligible individual's transactions with, or ownership of, an applicable tax-favored foreign trust. As a result, the penalties under section 6677 do not apply to eligible individuals who fail to report transactions with, or ownership of, these trusts under section 6048. In addition, eligible individuals who have been assessed penalties under section 6677 for failing to comply with section 6048 with respect to these trusts may, subject to the limitations of sections 6402 and 6511, request abatement of penalties that have been assessed or refund of penalties that have been paid, by following the procedures described in section 6 of this revenue procedure.

This revenue procedure does not affect any reporting obligations under section 6038D or under any other provision of U.S. law, including the requirement to file FinCEN Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*, imposed by 31 U.S.C. section 5314 and the regulations thereunder. This revenue procedure does not affect previously issued guidance providing an exception from section 6048 reporting with respect to distributions from certain foreign compensatory trusts under Section V of Notice 97-34, and an exception from all information reporting requirements under section 6048 with respect to certain Canadian retirement plans under Revenue

Procedure 2014-55. See also section 6048(a)(3)(B)(ii) (providing an exception from reporting with respect to transfers to foreign compensatory trusts described in section 402(b), 404(a)(4), or 404A).

SECTION 4. SCOPE

Sections 3 and 6 of this revenue procedure apply to any eligible individual who, but for this revenue procedure, is (or was) required to report a transaction with, or ownership of, an applicable tax-favored foreign trust under section 6048.

SECTION 5. DEFINITIONS

.01 *Applicable tax-favored foreign trust.* For purposes of this revenue procedure, an applicable tax-favored foreign trust means a tax-favored foreign retirement trust as defined under section 5.03 of this revenue procedure or a tax-favored foreign non-retirement savings trust as defined under section 5.04 of this revenue procedure.

.02 *Eligible Individual*. For purposes of this revenue procedure, an eligible individual means an individual who is, or at any time was, a U.S. citizen or resident (within the meaning of section 7701(a)(30)(A)) and who, for any period during which an amount of tax may be assessed under section 6501 (without regard to section 6501(c)(8)), is compliant (or comes into compliance) with all requirements for filing a U.S. federal income tax return (or returns) covering the period such individual was a U.S. citizen or resident, and to the extent required under U.S. tax law, has reported as income any contributions to, earnings of, or distributions from, an applicable tax-favored foreign trust on the applicable return (including on an amended return).

.03 *Tax-Favored Foreign Retirement Trust*. For purposes of this revenue procedure, a tax-favored foreign retirement trust means a foreign trust for U.S. tax purposes that is created, organized, or otherwise established under the laws of a foreign jurisdiction (the trust's jurisdiction) as a trust, plan, fund, scheme, or other arrangement (collectively, a trust) to operate exclusively or almost exclusively to provide, or to earn income for the provision of, pension or retirement benefits and ancillary or incidental benefits, and that meets the following requirements established by the laws of the trust's jurisdiction.

(1) The trust is generally exempt from income tax or is otherwise tax-favored under the laws of the trust's jurisdiction. For purposes of this revenue procedure, a trust is tax-favored if it meets any one or more of the following conditions: (i) contributions to the trust that would otherwise be subject to tax are deductible or excluded from income, are taxed at a reduced rate, give rise to a tax credit, or are otherwise eligible for another tax benefit (such as a government subsidy or contribution); and (ii) taxation of investment income earned by the trust is deferred until distribution or the investment income is taxed at a reduced rate.

(2) Annual information reporting with respect to the trust (or of its participants or beneficiaries) is provided, or is otherwise available, to the relevant tax authorities in the trust's jurisdiction.

(3) Only contributions with respect to income earned from the performance of personal services are permitted.

(4) Contributions to the trust are limited by a percentage of earned income of the participant, are subject to an annual limit of $50,000 or less to the trust, or are subject to a lifetime limit of $1,000,000 or less to the trust. These contribution limits are determined using the U.S. Treasury Bureau of Fiscal Service foreign currency

conversion rate on the last day of the tax year (available at https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange).

(5) Withdrawals, distributions, or payments from the trust are conditioned upon reaching a specified retirement age, disability, or death, or penalties apply to withdrawals, distributions, or payments made before such conditions are met. A trust that otherwise meets the requirements of this section 5.03(5), but that allows withdrawals, distributions, or payments for in-service loans or for reasons such as hardship, educational purposes, or the purchase of a primary residence, will be treated as meeting the requirements of this section 5.03(5).

(6) In the case of an employer-maintained trust, (i) the trust is nondiscriminatory insofar as a wide range of employees, including rank and file employees, must be eligible to make or receive contributions or accrue benefits under the terms of the trust (alone or in combination with other comparable plans), (ii) the trust (alone or in combination with other comparable plans) actually provides significant benefits for a substantial majority of eligible employees, and (iii) the benefits actually provided under the trust to eligible employees are nondiscriminatory.

A trust that otherwise meets the requirements of this section 5.03 will not fail to be treated as a tax-favored foreign retirement trust within the meaning of this section solely because it may receive a rollover of assets or funds transferred from another tax-favored foreign retirement trust established and operated under the laws of the same jurisdiction, provided that the trust transferring assets or funds also meets the requirements of this section 5.03.

.04 *Tax-Favored Foreign Non-Retirement Savings Trust*. For purposes of this revenue procedure, a tax-favored foreign non-retirement savings trust means a foreign trust for U.S. tax purposes that is created, organized, or otherwise established under the laws of a foreign jurisdiction (the trust's jurisdiction) as a trust, plan, fund, scheme, or other arrangement (collectively, a trust) to operate exclusively or almost exclusively to provide, or to earn income for the provision of, medical, disability, or educational benefits, and that meets the following requirements established by the laws of the trust's jurisdiction.

(1) The trust is generally exempt from income tax or is otherwise tax-favored under the laws of the trust's jurisdiction as defined in section 5.03(1) of this revenue procedure.

(2) Annual information reporting with respect to the trust (or about the beneficiary or participant) is provided, or is otherwise available, to the relevant tax authorities in the trust's jurisdiction.

(3) Contributions to the trust are limited to $10,000 or less annually or $200,000 or less on a lifetime basis, determined using the U.S. Treasury Bureau of Fiscal Service foreign currency conversion rate on the last day of the tax year (available at https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange).

(4) Withdrawals, distributions, or payments from the trust are conditioned upon the provision of medical, disability, or educational benefits, or apply penalties to withdrawals, distributions, or payments made before such conditions are met.

A trust that otherwise meets the requirements of this section 5.04 will not fail to be treated as a tax-favored foreign non-retirement savings trust within the meaning of this section 5.04 solely because it may receive a rollover of assets or funds transferred from another tax-favored foreign non-retirement savings trust established and operated under the laws of the same jurisdiction, provided that the trust transferring assets or funds also meets the requirements of this section 5.04.

SECTION 6. PROCEDURES FOR REQUESTING ABATEMENT OR REFUND OF SECTION 6677 PENALTIES

.01 *In General*. Subject to the limitations of sections 6402 and 6511, eligible individuals who have been assessed a penalty under section 6677 for failing to comply with section 6048 with respect to an applicable tax-favored foreign trust (without regard to whether such failure was due to reasonable cause under section 6677(d)) and who wish to obtain relief under this revenue procedure may request an abatement of the penalty assessed, or a refund of the penalty paid, under section 6677 by filing Form 843, *Claim for Refund and Request for Abatement*. Eligible individuals are not precluded from requesting relief under any other applicable relief provisions.

Under section 6402(a), the Secretary is authorized to credit, within the applicable period of limitations, an overpayment against any liability in respect of an internal revenue tax of the person who made the overpayment, and must generally refund any balance to that person, subject to the requirements of section 6402(c), (d), (e), and (f) (providing for offset for past-due support and certain debts to federal and state governments). Section 6511(b)(1) provides that no credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in section 6511(a), unless the taxpayer filed a claim for credit or refund within that period.

.02 *Where to File.* A Form 843 requesting relief under this revenue procedure should be mailed to Internal Revenue Service, Ogden, UT 84201-0027.

.03 *Filing Requirements for Form 843*. Eligible individuals should complete the form and write the statement “Relief pursuant to Revenue Procedure 2020-17” on Line 7 of the form. In addition, Line 7 should include an explanation of how the eligible individual meets each relevant requirement under section 5.02 of this revenue procedure and how the foreign trust meets each relevant requirement under section 5.03 or 5.04 of this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective as of the date this revenue procedure is published in the Internal Revenue Bulletin, and applies to all prior open taxable years, subject to the limitations of section 6511.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Tracy M. Villecco of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Tracy Villecco or Lara Banjanin at (202) 317-6933 (not a toll-free call).