Foreign Retirement and Savings Plans, Waiver of Forms 3520 and Forms 3520-A, and Limits of Rev. Proc. 2020-17

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I. Introduction

Taxpayers tend to applaud *any* measure by the IRS to simplify international tax compliance and waive penalties. Therefore, optimism reigned when the IRS issued Rev. Proc. 2020-17, which offers beneficial treatment, on a retrospective and prospective basis, to certain U.S. individuals with interests in "applicable tax-favored foreign trusts." Spirits increased as people realized that, when the IRS uses the term "foreign trusts" in the context of Rev. Proc. 2020-17, it is referring to something much broader, including foreign trusts, plans, funds, accounts, and other arrangements, which provide pension, retirement, medical, disability, or educational benefits. In short, taxpayers generally are pleased by the elimination of the duty to file Forms 3520 (*Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*) and Forms 3520-A (*Annual Information Return of Foreign Trust with a U.S. Owner*) in the future, as well as the chance to seek abatements or refunds of prior penalties.

As the dust has settled, and people have had an opportunity to analyze Rev. Proc. 2020-17 within a broader framework, its limitations have become clearer. This article explains the normal U.S. tax and information-reporting obligations for U.S. individuals with foreign plans, describes how the IRS previously resolved issues related to Canadian plans, summarizes the ongoing problems, and clarifies the scope of Rev. Proc. 2020-17. This article concludes that Rev. Proc. 2020-17 is a positive development, but the IRS needs to issue additional guidance to overcome the current ambiguity, complexity, and inconsistency with respect to the U.S. treatment of foreign plans of all types.

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II. Applicable Rules, Forms, and Consequences

One must first have some background in order to appreciate the significance of Rev. Proc. 2020-17. Below is an overview of the main tax and information-reporting duties of U.S. individuals with foreign retirement and other plans. The list is long because foreign plans often fall into more than one category for U.S. tax purposes, including foreign accounts, foreign financial assets, and foreign trusts.

A. Form 1040—Duty to Report Foreign Income

Generally, U.S. individuals, including U.S. citizens and U.S. residents, are subject to federal income tax on *all* income derived during a given tax period, regardless of where the income originates.[1] In other words, U.S. individuals face a system of worldwide taxation, requiring them to declare to the IRS on Form 1040 (*U.S. Individual Income Tax Return*) all income, whether it was earned, obtained, received or accrued in the United States or any other country. This, of course, creates issues for U.S. individuals who have lived and worked abroad at any point.

Taxpayers, always hoping for more guidance and parity in the international arena, will eagerly await further progress with respect to foreign retirement and other savings plans.

A recent report by the Government Accountability Office ("GAO Report") underscores the magnitude of the situation; there are nearly nine million U.S. citizens currently living abroad, many of whom have interests in local retirement or other savings plans.[2] This figure, though large, significantly understates the number of affected taxpayers because it fails to account for (i) former U.S. expatriates who have returned to the United States but maintain their foreign plans, and (ii) individuals who worked abroad, established foreign plans, and later became U.S. persons.

The GAO Report describes the distinct manner in which the U.S. tax system treats domestic versus foreign retirement plans. Specifically, it explains that, in the United States, contributions by employees, contributions by employers, and passive earnings (such as interest, dividends, and capital gains) within a "qualified" retirement plan generally are *not* taxed until the employee receives actual distributions from the plan.[3]

By contrast, foreign retirement plans ordinarily are not considered "qualified" plans under the Internal Revenue Code, so U.S. individuals working as employees abroad do not enjoy the same benefits as their counterparts with "qualified" domestic plans. Depending on several factors, including the characteristics of the plan, the local law, and the provisions in the applicable bilateral treaty, U.S. individuals who participate in foreign retirement plans might be currently taxed on (i) contributions made to the plans, by themselves or their employers, (ii) the accrued-but-undistributed-passive income in the plans, and (iii) distributions from the plans that they have not actually received, such as transfers of assets between or among various foreign plans (*i.e.*, rollovers).[4] To the extent that U.S. individuals are subject to current tax, they must report the relevant income on their annual Form 1040.

B. Schedule B to Form 1040—Duty to Report Foreign Accounts and Trusts

Part III (Foreign Accounts and Trusts) to Schedule B (Interest and Ordinary Dividends) of Form 1040 contains inquiries about foreign accounts and foreign trusts.

Questions about foreign accounts relate to FinCEN Form 114 ("FBAR"). The IRS has slightly modified and expanded the language over the years, with the current materials stating the following:

> At any time during [the relevant year], did you have a financial interest in or a signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions. If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements. If you are required to file a FinCEN Form 114, enter the name of the foreign country where the financial account is located.[5]

In addition to revealing data about foreign accounts, Part III to Schedule B of Form 1040 mandates disclosure of information about foreign trusts, referencing Form 3520 and Form 3520-A. The IRS presents the following question and warning:

> During [the relevant year], did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions on back.[6]

The IRS's Instructions to Schedule B expand on the foreign trust concept, providing this guidance:

> If you received a distribution from a foreign trust, you must provide additional information. For this purpose, a loan of cash or marketable securities generally is considered to be a distribution. See Form 3520 for details. If you were the grantor of, or transferor to, a foreign trust that existed during [the relevant year], you may have to file Form 3520 …. If you were treated as the owner of a foreign trust under the grantor trust rules, you are also responsible for ensuring that the foreign trust files Form 3520-A ….[7]

C. FBAR—Duty to Report Foreign Financial Accounts

Congress enacted the Bank Secrecy Act in 1970.[8] One purpose of this legislation was to require the filing of certain reports, like the FBAR, where doing so would be helpful to the U.S. government in carrying out criminal, tax, and regulatory investigations.[9]

The relevant statute, along with the corresponding regulations and FBAR Instructions, generally requires the filing of an FBAR in cases where (i) a U.S. person, including U.S. citizens, U.S. residents, and domestic entities, (ii) had a direct financial interest in, had an indirect financial interest in, had signature authority over, or had some other type of authority over (iii) one or more financial accounts (iv) located in a foreign country (v) whose aggregate value exceeded $10,000 (vi) at any point during the year at issue.[10]

Concerned with widespread FBAR non-compliance, the U.S. government has taken various actions in recent years. For instance, the Treasury Department transferred to the IRS authority to enforce FBAR duties in 2003.[11] The IRS has been empowered since then to investigate potential FBAR violations, issue summonses, assess penalties, issue administrative rulings, and take "any other action reasonably necessary" to enforce the FBAR rules.[12]

Congress, for its part, enacted new FBAR penalty provisions in 2004.[13] The IRS may now penalize *any* U.S. person who fails to file an FBAR when required, period.[14] In the case of non-willful violations, the maximum penalty is $10,000.[15] Higher penalties apply where willfulness exists. Specifically, in situations where a taxpayer willfully fails to file an FBAR, the IRS can assert a penalty equal to $100,000 or 50 percent of the balance in the account at the time of the violation, whichever amount is larger.[16] Given the astronomical balances in some unreported accounts, FBAR penalties can be enormous.

D. Form 8938—Duty to Report Foreign Financial Assets

Code Sec. 6038D, which mandates the filing of Form 8938 (*Statement of Foreign Financial Assets*), was enacted as part of the notorious Foreign Account Tax Compliance Act ("FATCA").[17] The general rule can be divided into the following parts: (i) any specified person ("SP"), which covers U.S. citizens, U.S. residents, certain domestic entities, and others, (ii) who/that holds an interest, (iii) in a specified foreign financial asset ("SFFA"), (iv) during any portion of a taxable year, (v) must attach to a timely tax return, (vi) a complete and accurate Form 8938, (vii) if the total value of all SFFAs, (viii) exceeds the applicable filing threshold.[18]

Holding an interest in an asset means different things in different contexts. When it comes to Form 8938, an SP generally holds an interest in an SFFA if any income, gains, losses, deductions, credits, gross proceeds, or distributions attributable to the holding or disposition of the SFFA are (or should be) reported, included, or otherwise reflected on the SP's annual tax return.[19] The regulations clarify that an SP has an interest in the SFFA *even if* no income, gains, losses, deductions, credits, gross proceeds, or distributions are attributable to the holding or disposition of the SFFA for the year in question.[20] The regulations also indicate that an SP must file a Form 8938, despite the fact that none of the SFFAs that must be reported affect the U.S. tax liability of the SP for the year.[21]

For purposes of Code Sec. 6038D, the term SFFA includes two major categories: foreign financial accounts,[22] and other foreign financial assets held for investment purposes.[23] Tax-favored foreign retirement and pensions plans generally are treated as "financial accounts" on Forms 8938.[24] Notably, even if these plans have been excluded from the definition of "financial account" under an intergovernmental agreement between the United States and a foreign country to implement FATCA, they will still be considered "financial accounts" for purposes of Form 8938. In other words, while certain foreign governments and financial institutions are not required to provide data to the IRS pursuant to FATCA about certain retirement plans, U.S. individuals holding such plans or accounts will not benefit from such accommodation.[25]

If an SP fails to file the Form 8938 in a timely manner, then the IRS generally will assert a penalty of $10,000 per violation.[26] The penalty increases to a maximum of $50,000 if the SP does not rectify the problem quickly after contact from the IRS.[27] An SP who unintentionally fails to file a timely, accurate, complete Form 8938 can avoid penalties if the SP can demonstrate that the violation was due to reasonable cause and not due to willful neglect.[28]

E. Form 3520 and Form 3520-A—Duty to Report Foreign Trusts

Taxpayers must file Form 3520 and/or Form 3520-A in certain situations. A summary of the relevant terms and requirements is set forth below.

1. Duties of Responsible Parties

A "responsible party" generally must file a Form 3520 within 90 days of certain "reportable events."[29] For these purposes, the term "responsible party" means (i) the grantor, in cases involving the creation of an *inter vivos* trust, (ii) the transferor, where there is a reportable event, other than a transfer upon death, and (iii) the executor of a decedent's estate.[30] Moreover, the term "reportable event" includes the creation of any foreign trust by a U.S. person, the transfer of any money or other property (directly, indirectly or constructively) to a foreign trust by a U.S. person, and the death of a U.S. person, if such person was treated as the "owner" of any portion of the foreign trust under the grantor trust rules or any portion of the foreign trust was included in the person's gross estate.[31]

2. Duties of Owners

If a U.S. person is treated as the "owner" of any portion of a foreign trust under the grantor trust rules at any time during a year, then the person (i) "shall submit" such information as the IRS prescribes with respect to the trust, and (ii) "shall be responsible to ensure" that the trust files Form 3520-A and furnishes the information required by the IRS to each U.S. person who is treated as the owner of any portion of the trust, or who receives (directly, indirectly, or constructively) any distribution from the trust.[32]

3. Duties of Beneficiaries

A U.S. person ordinarily must file a Form 3520 if such person receives (directly, indirectly, or constructively) during the year any distribution from a foreign trust.[33] The IRS, predictably, defines the concept of "distribution" broadly to include any gratuitous transfer of money or property from a foreign trust, whether or not another person owns the trust.[34]

4. Penalties for Violations

The penalty for not filing a timely, complete, accurate Form 3520 is $10,000 or 35 percent of the so-called "gross reportable amount," whichever is larger.[35] If the violation involves Form 3520-A (pertaining to owners of foreign trusts) instead of Form 3520 (pertaining to responsible parties and beneficiaries), then the penalty decreases from 35 percent to five percent.[36]

Taxpayers might also be hit with a so-called "continuation penalty," if they fail to submit to the IRS the necessary Forms 3520 and/or Forms 3520-A, after the IRS notifies them of the infraction. Specifically, if taxpayers refuse to become compliant within 90 days of notice, then the IRS will assess an additional penalty of $10,000 per month.[37]

The IRS will not assert Form 3520 or Form 3520-A penalties where there is "reasonable cause" for the violation and it was not due to "willful neglect."[38] Because the IRS has never issued regulations explaining the significance of "reasonable cause" for these purposes, courts have been receptive to arguments applying the reasonable cause standards set forth elsewhere.[39]

III. Previous IRS Solutions for Canadian Retirement Plans

This article focuses on the IRS's *broad* solution in Rev. Proc. 2020-17 with respect to *all* "applicable tax-favored foreign trusts," including retirement instruments. However, it is important to note that the IRS has addressed similar issues in the past, focusing on Canadian registered retirement savings plans ("RRSPs"), Canadian registered retirement income fund ("RRIFs"), or similar Canadian retirement instruments.[40]

A. Evolution of Special Rules for Certain Canadian Plans

For nearly three decades, the IRS introduced special rules and procedures that applied only to U.S. persons holding certain Canadian retirement instruments.

1. U.S.-Canada Treaty

The tax treatment of Canadian RRSPs and RRIFs in Canada is similar to that afforded to Code Sec. 401(k) plans in the United States; that is, to encourage people to save for retirement, certain contributions to, and gains accrued in, these types of plans generally are not taxed each year. Taxation ordinarily does not begin until the beneficiary reaches a certain age and/or begins withdrawing funds from the plan.[41]

Although beneficiaries of Canadian RRSPs, RRIFs, and other retirement plans enjoyed tax-deferral benefits in Canada, they have not always been so lucky in the United States. Indeed, until the IRS issued Rev. Proc. 2014-55, which is discussed below, U.S. tax law dictated that an individual who is a U.S. citizen or U.S. resident, as well as a beneficiary of the Canadian retirement plan, was generally subject to current U.S. taxation on the accrued-yet-undistributed-passive income in such plans, *even though* the income was not actually distributed.

The harshness of this traditional rule was mitigated by the United States-Canada Income Tax Convention ("Treaty"), which allowed an individual to opt-out of this inconsistent tax treatment.[42] The Treaty provided that an individual who is a U.S. person and a beneficiary of a Canadian trust, company, organization, or other arrangement that is generally tax-exempt in Canada and operated exclusively to provide pension, retirement, or employee benefits *could affirmatively elect* to defer U.S. tax on the accrued-yet-undistributed-passive income from the plan until such income was actually distributed.[43] In other words, the Treaty essentially allowed U.S. persons who were beneficiaries of certain Canadian retirement plans to unilaterally tell the IRS that they would be treating such plans like Code Sec. 401(k) plans.

2. Three IRS Notices Showing Changes

The IRS issued three main Notices serving as guidance about Canadian retirement plans. They show how the IRS gradually changed its opinion, over just one year, regarding whether Canadian retirement plans are "foreign trusts" and how taxpayers must report them. As seen below, the IRS first claimed that taxpayers must file Forms 3520 and Forms 3520-A, then it softened its position by stating that merely making a tax-deferral election sufficed, and it finally concluded that Forms 3520 and Forms 3520-A were no longer necessary.

a. Notice 2003-25. Notice 2003-25 began by explaining that certain information reporting requirements are applicable to "foreign trusts."[44] These include filing a Form 3520 and/or Form 3520-A, as necessary. In Notice 2003-25, the IRS acknowledged that many beneficiaries and custodians of Canadian RRSPs and RRIFs were "unfamiliar" with the foreign trust reporting requirements, not to mention that these Canadian retirement plans were considered "foreign trusts" in the first place. In light of the widespread ignorance of U.S. tax duties and definitions, the IRS granted an automatic filing extension for Form 3520 and Form 3520-A for 2002.

b. Notice 2003-57. Apparently, few taxpayers filed their Forms 3520 or 3520-A by the extended deadline for 2002 because the IRS issued its next release, Notice 2003-57, just 10 days after such deadline. Notice 2003-57 contained "additional relief" with respect to the information reporting requirements for 2002. In particular, if the beneficiary of a Canadian plan made a proper tax-deferral election and received no actual distributions from the plan during 2002, then the beneficiary was not obligated to file a Form 3530 or 3520-A for 2002.[45] In other words, the IRS conceded that making the tax-deferral election, without more, would suffice for 2002.

c. Notice 2003-75. Four months later, the IRS changed its tune when it issued Notice 2003-75, thereby introducing a "new simplified reporting regime." Notice 2003-75 announced that the IRS was designing a new Form to address Canadian retirement plans. Taxpayers were instructed to comply with some interim rules until the IRS published the promised Form.[46]

One of the most interesting (and often overlooked) aspects of Notice 2003-75 was the IRS's dramatic change of heart regarding Forms 3520 and 3520-A. Earlier in the year, the IRS indicated that Canadian RRSPs and RRIFs were "foreign trusts." In Notice 2003-75, however, the IRS reversed course entirely, stating that the "new simplified reporting regime" provided all the information the IRS needed for tax-compliance purposes, and that taxpayers would no longer need to file Forms 3520 and/or Forms 3520-A.[47] To support this change, the IRS invoked Code Sec. 6048(d)(4), which authorizes the IRS to suspend or modify any filing requirements related to foreign trusts, if it determines that it does not have a significant interest in obtaining the data.[48]

Pursuant to Notice 2003-75, the IRS eventually introduced Form 8891(*U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans*) in 2004. U.S. individuals could use Form 8891 to report contributions to, accrued-yet-undistributed-passive income in, and actual distributions received from an RRSP or RRIF. They could also use Form 8891 to make a tax-deferral election pursuant to the Treaty.[49]

B. Rev. Proc. 2014-55

Approximately 25 years after the IRS began issuing administrative pronouncements regarding the proper U.S. tax treatment of Canadian retirement plans, the IRS published Rev. Proc. 2014-55 in late 2014. It essentially rendered all previous IRS guidance obsolete.

Rev. Proc. 2014-55 placed taxpayers into four categories, the most relevant of which was "eligible individuals." For purposes of Rev. Proc. 2014-55, an "eligible individual" was one who (i) is or was a U.S. citizen or U.S. resident while he was also a beneficiary of a Canadian retirement plan, (ii) filed annual Forms 1040 with the IRS, (iii) did not report as gross income on his Forms 1040 the accrued-yet-undistributed-passive income in the Canadian retirement plan, and (iv) reported on his Forms 1040 all actual distributions from the Canadian retirement plan.[50] Thus, "eligible individuals" were those who had underpaid taxes to the IRS, because they failed to make a tax-deferral election and they also failed to report on their Forms 1040 the accrued-yet-undistributed-passive income in the Canadian retirement plans.

According to Rev. Proc. 2014-55, an "eligible individual" who did not make a tax-deferral election under the Treaty "will be treated as having made the election in the first year in which the individual would have been entitled to elect the benefits under [the Treaty] with respect to the plan."[51] As a result, the "eligible individual" was not obligated to actually make the tax-deferral election for the first year or any later years on Form 8891 or otherwise.[52] Once an "eligible individual" was deemed to have made this automatic, retroactive, tax-deferral election, it generally remains in effect for all subsequent years, until the year in which he receives the final distribution from the Canadian retirement plans.[53]

While Rev. Proc. 2014-55 clarified the federal income tax issues, it did *not* address other important issues. Among other things, Rev. Proc. 2014-55 emphasized that, notwithstanding favorable U.S. income tax treatment, beneficiaries of Canadian retirement plans likely still needed to file annual Forms 8938 and FBARs. It stated the following in this regard:

> This revenue procedure does not, however, affect any reporting obligations that a beneficiary or annuitant of a Canadian retirement plan may have 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. § 5314 and the regulations thereunder.[54]

The IRS included a similar warning in its news release about Rev. Proc. 2014-55, cautioning that it "does not modify any other U.S. reporting requirements that may apply under the Bank Secrecy Act (BSA) and Section 6038D."[55]

IV. Ongoing Ambiguity with Other Foreign Retirement Plans

While the IRS made progress with respect to Canadian retirement plans over the years, the recent GAO Report strongly criticized the IRS and Congress for allowing the perpetuation of a complex, obscure, and inconsistent system affecting *other* foreign retirement plans.[56]

A. GAO Report Identifies Numerous Problems

The GAO Report documents the U.S. tax and information-reporting problems faced by U.S. individuals with foreign retirement instruments.

1. IRS Guidance Is Insufficient and Unclear

The GAO Report acknowledges that the IRS has provided some limited guidance about foreign workplace retirement plans, such as the International Tax Gap Series and Publication 54, titled "Tax Guide for U.S. Citizens and Resident Aliens Abroad." However, the GAO Report explains that neither item "describes in detail how taxpayers are to determine if their foreign workplace retirement plan is eligible for tax-deferred status, or how to account for contributions, earnings, or distributions on their annual U.S. tax return, particularly whether and when contributions and earnings should be taxed as income."[57]

The GAO Report confirms the IRS's position that foreign workplace retirement plans generally are *not* considered "qualified" plans for U.S. tax purposes and thus are *not* entitled to the corresponding tax benefits. The GAO Report explains the following in this regard:

> IRS officials told us that U.S. tax law generally does *not* recognize foreign retirement plans as tax-qualified and IRS does *not* recognize any retirement accounts outside the United States as having tax-qualified status. IRS officials we spoke to said that only plans meeting the specific requirements of [Section] 401(k) or other requirements describing retirement plan qualification may achieve tax-qualified status in the United States. As a result, according to IRS guidance, U.S. individuals participating in foreign workplace retirement plans generally *cannot* deduct contributions to their account from their income on their U.S. tax return. This is true *even if* the retirement account is considered a tax-deferred retirement account in the country where the individual works, and even if the account is similar in nature to those found in a U.S.-type retirement plan, such as a [Section] 401(k) plan.[58]

Lack of clarity from the IRS has created disagreement among U.S. tax practitioners about how to treat foreign plans. According to the GAO Report, some practitioners advise their clients to report them as passive foreign investment companies ("PFICs") on Forms 8621 (*Return by U.S. Shareholder of a Passive Foreign Investment Company*), others recommend disclosing them as foreign financial accounts on FBARs and Forms 8938, while still others suggest that they should be treated as foreign trusts and reported on Forms 3520 and Forms 3520-A.[59]

The GAO Report also explains that the IRS sticks to its normal mantra when it comes to international tax issues, which is that taxpayers are ultimately liable for getting things right, notwithstanding the complexity of the issues, the lack of guidance from the IRS, and the confusion among tax professionals about how to treat foreign plans: "IRS officials told us that individual taxpayers are responsible for understanding their filing requirements and for determining how to correctly file their tax returns, regardless of whether they live in a foreign country or the United States."[60]

2. Transfers Generally Trigger Immediate Taxation

A major issue addressed by the GAO Report, but unknown to many U.S. individuals and tax practitioners, is that changing jobs and transferring (*i.e.*, "rolling over") savings from one foreign workplace retirement plan to another likely triggers immediate U.S. taxation.[61] The IRS acknowledges that such movements of money generally do not undermine tax-deferred status in the foreign country where the plan is located, but this does not alter the fact that the U.S. tax system views it differently:

> IRS officials told us the [Internal Revenue Code] does not recognize foreign retirement plans as tax-qualified plans, and because these plans are not able to meet the criteria for qualification, tax-deferred transfers or rollovers may not be possible, unless a tax treaty provides otherwise. *IRS generally considers routine administrative transfers of retirement assets that occur between or within foreign retirement plans to be distributions to the participant and therefore taxable income* … [T]he transfers would generally constitute a "constructive receipt of funds" by the participant and would be reportable and taxable. As a result, a U.S. individual who participates in a foreign retirement plan could owe U.S. tax *on the entire amount of their retirement savings* when they separate from their employer and their account is transferred to another account within the plan or to a different workplace retirement plan.[62]

The GAO Report explains that officials of the Treasury Department have been aware of this issue for many years, raised it during treaty negotiations with other countries, and proposed in the most recent U.S. Model Income Tax Treaty a clause that would generally exempt from immediate U.S. income tax transfers between foreign workplace retirement plans.[63] Positive news, indeed, but the reality remains that, as of today, many countries lack tax treaties with the United States or they have outdated treaties that do not specifically address the impact on U.S. individuals of making transfers among retirement plans.[64]

Solutions are sparse, at least in the short term. The GAO Report points out that renegotiating a tax treaty is a slow process and normally will not occur in order to rectify just one issue, such as the U.S. tax treatment of foreign retirement plans.[65] It suggests that the best way to provide "more immediate relief" would be to have Congress enact appropriate legislation. Unless and until that occurs, warns the GAO Report, "U.S. individuals who participate in foreign workplace retirement plans must follow current law, which does not provide tax deferral for transfers within or between foreign plans, even those that may be eligible for tax-deferred contributions and earnings in the foreign jurisdiction."[66]

3. Suggestions and Future Actions

The GAO Report contained several suggestions, three of which focused on the complexity of international tax compliance and perceived unfairness. First, the GAO Report recommended that the IRS provide clear guidance about U.S. tax and information-reporting requirements to minimize the compliance burden and avoid unintentional violations.[67] Second, it proposed that the IRS conduct a systematic analysis of data about foreign retirement plans now disclosed on Form 8938 to determine whether it would be appropriate to waive such information-reporting duty in the future.[68] Finally, the GAO Report suggested that Congress consider assisting U.S. individuals who participate in foreign retirement plans by allowing them to be treated as "qualified" retirement plans in the United States, such as a Code Sec. 401(k) plan.[69]

B. Two Examples of Harsh Treatment

The GAO Report painted a bleak picture for U.S. individuals with foreign retirement plans. Lest anyone think that hyperbole was involved, two examples are set forth below.

1. Swiss Retirement Plans

The IRS released in November 2017 a legal memo dealing with retirement instruments in Switzerland.[70] The taxpayer in the memo worked in the United States, had an employer-established U.S. pension, was terminated from her job, accepted a new position and moved to Switzerland, transferred the funds from the U.S. pension to a Swiss "libre passage" account (which the taxpayer believed was analogous to a tax-deferred Individual Retirement Account in the United States), did not report on Forms 1040 any accrued-yet-undistributed-passive income within the Swiss retirement account or any distributions from such account, and, presumably, did not report the account on Form 8938 or an FBAR.

The IRS concluded the following in the memo: (i) The transfer from the U.S. pension to the Swiss libre passage account was not a tax-free, qualified rollover, such that the taxpayer should have been taxed on the total amount relocated; (ii) The taxpayer should have reported on her annual Forms 1040 all accrued-yet-undistributed-passive income; (iii) The tax treaty in effect between the United States and Switzerland "provides no exceptions or relief"; and (iv) Because the Swiss libre passage account was not in compliance with U.S. law, the taxpayer must include the highest value of such account in the "offshore" penalty calculation as part of her participation in a voluntary disclosure program with the IRS. In what might be labeled as one of the biggest understatements in recent memory, the legal memo concludes that "[t]he facts of this case are sympathetic in that the rules relating to foreign pension accounts are not intuitive, *and we anticipate that the taxpayer's representatives will not be pleased with the conclusion in this memorandum*."

2. Australian Retirement Plans

U.S. individuals with Australian retirement plans have fared no better than those in Switzerland. Taxpayers and practitioners have sought guidance and a remedy from the IRS for many years with respect to a common retirement vehicle, the Australian Superannuation Fund ("ASF"), by sending letters underscoring the inconsistent tax treatment provided by the U.S. and Australian tax authorities, as well as the lack of specific language in the U.S.-Australian treaty to correct the issue.[71] One letter from the American Chamber of Commerce in Australia sums up the issues (and the outrage) nicely:

> I have recently been advised that under current treaty arrangements the annual income of my Australian superannuation funds is subject to 39.6% US tax (in excess of $21,000 AUS for my 2013 return). As Australian taxpayers are not able to draw on their superannuation funds to pay US tax before they reach preservation age, this can cause significant financial hardship. In addition to US taxation of the annual income of Australian superannuation funds, there is US taxation on the transaction when they roll over into an allocated pension stream and taxation on the annual annuity/pension, thus causing further financial strain. The treaty does not recognize that Australian superannuation funds meet Australian regulatory requirements and are similar

in purpose and structure to American retirement funds which are not similarly taxed. Nor does it account for the fact that the taxation of Australian superannuation funds by the United States amounts to double taxation; Australian superannuation funds are already taxed, albeit at different intervals and different time frames than retirement funds in the United States.[72]

Based on the available data, it appears that neither Congress nor the IRS is heeding the call for change. In 2017, the IRS was obligated to release a portion of the written guidance that it provides to personnel tasked with answering calls from taxpayers on the so-called "voluntary disclosure hotline."[73] The IRS guidance instructed personnel to say the following with respect to ASFs: (i) Unlike certain retirement plans in Canada, ASFs are not covered by a favorable treaty provision; (ii) The voluntary disclosure programs offered by the IRS do not have special provisions for ASFs; (iii) The highest value of ASFs that are not compliant with U.S. tax and/or information-reporting obligations is subject to the "offshore" penalty; and (iv) ASFs must be reported on various international information returns, including, but not limited to, Forms 3520 and Forms 3520-A related to foreign trusts.

V. New Rev. Proc. 2020-17

The IRS demonstrated, in the context of Canadian retirement plans, that it understands how to simplify information reporting, including waiver of the Form 3520 and Form 3520-A filing duty. Thanks to the recent GAO Report, the IRS is hyperaware of the confusion and collective opinion of injustice regarding the U.S. tax treatment of retirement plans in other countries. Perhaps with this in mind, the IRS recently issued Rev. Proc. 2020-17.[74]

A. Background on the Newest IRS Guidance

The IRS indicates that its primary purpose is to create an exemption from certain information-reporting requirements (but not income-reporting and tax-payment requirements) for some U.S. individuals with respect to their ownership of, and transactions with, certain types of foreign trusts.[75]

Rev. Proc. 2020-17 is prospective, in that it relieves certain U.S. individuals from filing Forms 3520 and Forms 3520-A in the future. It is also retrospective, in that it contains a process for individuals sanctioned by the IRS in the past to seek abatement or refund of penalties.

Similar to what occurred years ago with Canadian retirement plans, the IRS is invoking its authority under Code Sec. 6048(d)(4) to eliminate the need for Forms 3520 and Forms 3520-A going forward. That provision empowers the IRS to suspend or modify information-reporting duties, if the IRS unilaterally determines that it "has no significant tax interest" in obtaining the relevant data.[76]

The IRS indicates that it "intends to issue regulations" consistent with Rev. Proc. 2020-17, without specifying, of course, a deadline, scope of coverage, whether the regulations will include a specific list of affected foreign plans, and other important issues.[77]

B. Key Definitions

Understanding the key terms is undeniably tedious, but necessary, in order to grasp the benefits and limits of Rev. Proc. 2020-17.

1. Eligible Individual

An "eligible individual" is any individual who is, or who was at any time, (i) a U.S. citizen or U.S. resident, (ii) who, for any year whose general assessment-period under Code Sec. 6501 remains open, was compliant "or comes into compliance" with his duty to file Forms 1040, and (iii) to the extent required, has reported as income on Forms 1040 or Forms 1040X contributions to, accrued-yet-undistributed-passive income in, and/or actual distributions from an "applicable tax-favored foreign trust."[78]

Rev. Proc. 2020-17 mentions the importance of past U.S. income reporting elsewhere. It states that "[o]nly eligible individuals … (generally U.S. individuals who have been compliant with respect to their income tax obligations related to such trusts) may rely on" the new IRS guidance.[79]

2. Applicable Tax-Favored Foreign Trust

An "applicable tax-favored foreign trust" includes both "tax-favored foreign retirement trust" and "tax-favored foreign non-retirement trust," as described below.[80]

3. Tax-Favored Retirement Trust

A "tax-favored retirement trust" means (i) a "trust, plan, fund, scheme, or other arrangement" (ii) created, organized, or otherwise established under the laws of a foreign country (iii) 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 (iv) meets *all* the following requirements established under local law[81]:

- The trust is generally tax-exempt or otherwise "tax-favored" under local law. For these purposes, a trust is "tax-favored" if it meets at least one of the following two conditions: (i) Contributions to the trust are excluded from income, taxed at a reduced rate, generate a tax credit, or trigger another tax benefit, such as a government subsidy or contribution; or (ii) The investment income (*i.e.*, the accrued-yet-undistributed-passive income) is not taxed until it is distributed or it is subject to a reduced rate.[82]
- Annual information-reporting with respect to the trust, its participants, or its beneficiaries is submitted to, or otherwise available to, the local tax authorities.[83]
- Contributions to the trust are limited to income earned from performing personal services.[84]
- Contributions to the trust cannot exceed a percentage of earned income by the participant, they cannot surpass $50,000 per year, or they are subject to a lifetime maximum of $1 million.[85]
- Withdrawals, distributions, or payments from the trust are contingent upon death, disability, or reaching a set retirement age, or penalties apply to those occurring earlier.[86]
- In the case of an employer-maintained trust, (i) the trust is nondiscretionary (in that a wide range of employees at different levels must be eligible to participate), (ii) the trust, either alone or in combination with other comparable plans, actually provides significant benefits for a substantial majority of eligible employees, and (iii) the benefits provided under the trust are nondiscriminatory.[87]

Rev. Proc. 2020-17 expressly states that a trust will not fail to qualify as a "tax-favored retirement trust" solely because it may receive a rollover of assets or funds from another "tax-favored retirement trust" that was established and operated under the same local law.[88]

4. Tax-Favored Non-Retirement Savings Trust

A "tax-favored non-retirement savings trust" means (i) a "trust, plan, fund, scheme, or other arrangement" (ii) created, organized, or otherwise established under the laws of a foreign country (iii) to operate exclusively (or almost exclusively) to provide, or to earn income for the provision of, medical, disability, or educational benefits, and (iv) meets *all* the following requirements established under local law[89]:

- The trust is generally tax-exempt or is otherwise "tax-favored" under local law.[90]
- Annual information-reporting with respect to the trust, its participants, or its beneficiaries is submitted to, or otherwise available to, the local tax authorities.[91]
- Contributions to the trust cannot exceed $10,000 per year or $200,000 over a lifetime.[92]
- Withdrawals, distributions, or payments from the trust are conditioned upon the provision of medical, disability, or educational benefits, or penalties apply to those occurring for any other purpose.[93]

Rev. Proc. 2020-17 explains that a trust will not fail to qualify as a "tax-favored non-retirement savings trust" solely because it can receive a rollover of assets or funds from another "tax-favored non-retirement savings trust" that was established and operated under the same local law.[94]

C. Prospective Matters—Future Filing Waiver

This IRS waives the duty to file Forms 3520 and Forms 3520-A to "eligible individuals" with respect to items that qualify as a "tax-favored retirement trust" or a "tax-favored non-retirement savings trust." Its rationale for doing so is two-fold: These items are restricted under foreign law, and taxpayers already report them to the IRS on other international information returns. Rev. Proc. 2020-17 states the following regarding motive:

> The IRS 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 interests 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.[95]

D. Retrospective Matters—Rectifying Past Penalties

Generally, any "eligible individual" against whom the IRS has already assessed a penalty related to Forms 3520 and/or Forms 3520-A with respect to an "applicable tax-favored foreign trust" can seek an abatement or a refund, as appropriate, by filing a Form 843 (*Claim for Refund and Request for Abatement*).[96] Taxpayers should send Forms 843 to the Internal Revenue Service, Ogden, Utah 84201-0027.[97] On Line 7 of Form 843, taxpayers must write "Relief Pursuant to Revenue Procedure 2020-17" and explain how they meet the "eligible individual" and "applicable tax-favored foreign trust" criteria.[98]

As one would expect, the period for seeking compensation from the IRS is narrow. Rev. Proc. 2020-17 only applies to years whose general refund period has not expired.[99] A taxpayer normally must file a claim for refund within three years from the time that he filed the relevant tax return (regardless of whether such return was filed timely or late), or within two years from the time that he paid the relevant amount, whichever period expires later.[100]

VI. Conclusion

Any step by the IRS toward simplifying international information reporting is positive, and Rev. Proc. 2020-17 is no exception. However, while applauding its issuance, taxpayers and their advisors need to be aware of its limitations.

First, in order to be an "eligible individual," a taxpayer must have filed his annual Forms 1040 and reported *all* worldwide income, which ordinarily includes all contributions to, accrued-yet-undistributed-passive income generated by, and/or actual distributions from the "applicable tax-favored foreign trust."[101] The reality is that many taxpayers with foreign plans cannot meet this criterion because they failed to declare all income based on the incorrect understanding that they should treat the foreign plans like Code Sec. 401(k) plans for U.S. tax purposes.

Second, foreign plans do not qualify for the Form 3520 and Form 3520-A waiver unless they meet a very long list of requirements to be an "applicable tax-favored foreign trust." Foreign plans might satisfy some, but not all, of the conditions. Additionally, obtaining all the necessary data, translating it, and adjusting it to account for different legal and tax systems can be a challenge for taxpayers dealing with foreign companies, labor authorities, tax agencies, *etc*.

Third, even if a taxpayer were entitled to a future filing waiver under Rev. Proc. 2020-17, he likely still would need to report the "applicable tax-favored foreign trust" to the IRS on Form 8938, the FBAR, Part III of Schedule B of Form 1040 and, perhaps, elsewhere. Moreover, unless the "applicable tax-favored foreign trust" is located in one of the very few countries with which the United States has a treaty exempting current taxation of accrued-yet-undistributed-passive income, the taxpayer must declare such income on his Forms 1040, along with contributions made and distributions received. The taxpayer, therefore, will not be relieved of any information-gathering or record-retention duties thanks to Rev. Proc. 2020-17.[102]

Fourth, the time for claiming an abatement or refund of penalties assessed for prior years might have already expired for many taxpayers due to the current IRS procedures applicable to Form 3520 and Form 3520-A disputes. The tax community has notified the IRS for ages that widespread problems exist as a result of immediate penalty assessment, failure to consider legitimate "reasonable cause" positions, dishonoring collection freezes, ignoring the first-time abate policy, and prematurely forcing taxpayers to seek justice through a collection due process hearing or Tax Court litigation.[103]

Fifth, the ability to seek penalty abatement pursuant to Rev. Proc. 2020-17 might add nothing to the mix, at least retrospectively. As indicated above, in order for a U.S. individual to meet the "eligible individual" standard, he must have reported on his Forms 1040 the contributions to, accrued-yet-undistributed-passive income generated by, and/or actual distributions from the "applicable tax-favored foreign trust." Provided that the failure to file Forms 3520 and Forms 3520-A was due to "reasonable cause," and provided that the individual is not under audit or investigation by the IRS, the individual could have already resolved the violations, on a penalty-free basis, through the delinquent international information return submission procedure ("DIIRSP").[104] Indeed, the individual could have rectified matters under the DIIRSP, without sanctions, even if he failed to report on his annual Forms 1040 all income related to the "applicable tax-favored trust." IRS guidance issued in connection with the DIIRSP expressly states that the existence of unreported income does *not* necessarily render a taxpayer ineligible: "Taxpayers who have unreported income or unpaid tax are not precluded from filing delinquent international information returns."[105]

Sixth, Rev. Proc. 2020-17 does not affect previous exemptions and special rules related to "foreign compensatory trusts" and Canadian retirement plans.[106]

Seventh, and most importantly, Rev. Proc. 2020-17 does nothing to resolve the larger problems underscored by the GAO Report, namely, (i) the lack of comprehensive guidance from the IRS about information-reporting obligations related to foreign plans of all types (*i.e.*, must taxpayers file Forms 8938, FBARs, Forms 3520, Forms 3520-A, Forms 8621, *etc.*?) to reduce the compliance burden and avoid large, unintentional penalties, and (ii) the lack of legislation from Congress allowing U.S. individuals with foreign plans to treat them like Code Sec. 401(k) plans.[107]

Rev. Proc. 2020-17 is an encouraging step by the IRS. Taxpayers, always hoping for more guidance and parity in the international arena, will eagerly await further progress with respect to foreign retirement and other savings plans.

ENDNOTES

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1 Code Sec. 7701(a)(31)(A); Code Sec. 61(a) and Reg. §1.61-1(a) both provide that "gross income" generally means "all income from whatever source derived."

2 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 3.

3 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 11–12.

4 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 12–14.

5 2019 Schedule B (Interest and Ordinary Dividends), Part III (Foreign Accounts and Trusts), Question 7.

6 2019 Schedule B (Interest and Ordinary Dividends), Part III (Foreign Accounts and Trusts), Question 8.

7 IRS 2019 Instructions for Schedule B, at B-3.

8 P.L. 91-508, Title I and Title II (Oct. 26, 1970).

9 P.L. 91-508, Title I and Title II (Oct. 26, 1970) at §202. FinCEN Form 114 was previously called Form T.D. F 90-22.1.

10 31 USC §5314; 31 CFR §1010.350(a).

11 68 FR 26,489 (May 16, 2003).

12 31 CFR §103.56(g), 68 FR 26,489 (May 16, 2003).

13 American Jobs Creation Act, P.L. 108-357 (Oct. 22, 2004).

14 31 USC §5321(a)(5)(A).

15 31 USC §5321(a)(5)(B)(ii). The non-willful penalty does not apply if there was "reasonable cause" for the violation.

16 31 USC §5321(a)(5)(C)(i).

17 P.L. 111-147, Hiring Incentives to Restore Employment Act, Section 511, March 18, 2010.

18 Code Sec. 6038(a). For a detailed analysis of the Form 8938 filing requirement, *see* Hale E. Sheppard, *The New Duty to Report Foreign Financial Assets on Form 8938: Demystifying the Complex Rules and Severe Consequences of Noncompliance*, Int'l Tax J., 2012, at 11; Hale E. Sheppard, *Form 8938 and Foreign Financial Assets: A Comprehensive Analysis of the Reporting Rules After IRS Issues Final Regulations*, Int'l Tax J., 2015, at 25; Hale E. Sheppard, *Specified Domestic Entities Must Now File Form 8938: Section 6038D, New Regulations in 2016, and Expanded Foreign Financial Asset Reporting*, Int'l Tax J., 2016, at 5; and Hale E. Sheppard, *Unlimited Assessment-Period for Form 8938 Violations: Ruling Shows IRS's Intent to Attack Multiple Tax Returns*, Taxes, 2017, at 31.

19 Reg. §1.6038D-2(b)(1).

20 Reg. §1.6038D-2(b)(1).

21 Reg. §1.6038D-2(a)(8).

22 Code Sec. 6038D(b)(1); Reg. §1.6038D-3(a)(1).

23 Code Sec. 6038D(b)(2); Reg. §1.6038D-3(b)(1).

24 Reg. §1.1471-5(b)(2)(i)(A), (B) and (D); *see also* Reg. §1.6038D-3(a).

25 *See* Reg. §1.1471-5(b)(2)(vi); Reg. §1.6038D-1(a)(7); Preamble, 76 FR 73,819–73,820 (Dec. 12, 2014); Instructions to Form 8938 (October 2015), at 5.

26 Code Sec. 6038D(d)(1); Reg. §1.6038D-8(a).

27 Code Sec. 6038D(d)(2); Reg. §1.6038D-8(c).

28 Code Sec. 6038D(g); Reg. §1.6038D-8(e)(1).

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

30 Code Sec. 6048(a)(4).

31 Code Sec. 6048(a)(3)(A). The "grantor trust rules" are located in Code Secs. 671 through 679.

32 Code Sec. 6048(b)(1), after March 18, 2010; Notice 97-34, Section IV.

33 Code Sec. 6048(c)(1).

34 Notice 97-34, Section V.

35 Code Sec. 6677(a).

36 Code Sec. 6677(b).

37 Code Sec. 6677(a).

38 Code Sec. 6677(d); Notice 97-34, Section VII.

39 *James*, 100 AFTR 2d 2012-5587 (Aug. 14, 2012).

40 For a detailed analysis about the evolution of Canadian issues, *see* Hale E. Sheppard, *When Bygones Aren't Bygones: Exploring Tax Solutions for U.S. Persons with Undeclared Canadian Retirement Plans and Accounts*, Int'l Tax J., 2008, at 35; Hale E. Sheppard, *IRS Introduces Two Unique Tax-Compliance Remedies for U.S. Persons with Canadian Retirement Plans and Accounts*, Int'l Tax J., 2013, at 11; Hale E. Sheppard, *Canadian Retirement Plans: What Does Revenue Procedure 2014-55 Mean for U.S. Tax Deferral, Form 8891, Form 8938, and the FBAR?* Int'l Tax J., 2016, at 25.

41 For a more detailed explanation of the tax treatment of RRSPs and RRIFs under both Canadian and U.S. law, *see* R. Kent Weaver, *Pension Reform in Canada: Lessons for the United States*, 65 Ohio State Law Journal 45 (2004); Cynthia Blum, *U.S. Income Taxation of Cross-Border Pensions*, 31 Florida Tax Review 259 (1996).

42 Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital signed on September 26, 1980, as amended by protocols signed on June 14, 1983, March 28, 1984, March 17, 1995, July 29, 1997, and September 21, 2007.

43 Treaty, Article XVIII (Pensions and Annuities). The IRS later provided instructions on how to make the tax-deferral election in Rev. Proc. 89-45 and Rev. Proc. 2002-23.

44 Code Sec. 6048.

45 Notice 2003-57, Section 2.

46 Notice 2003-75, Section 2.

47 Notice 2003-75, Section 3. This change came in the wake of lobbying by various groups, including the American Institute of Certified Public Accountants. *See AICPA Comments on Foreign Trust Information Return Form*, 2003 Tax Notes Today 124-55 (June 19, 2003).

48 Code Sec. 6048(d)(4).

49 Instructions to Form 8891 (Rev. December 2006).

50 Rev. Proc. 2014-55, Section 4.01.

51 Rev. Proc. 2014-55, Section 4.02.

52 Rev. Proc. 2014-55, Section 4.02.

53 Rev. Proc. 2014-55, Section 4.03.

54 Rev. Proc. 2014-55, Section 5.01.

55 IRS News Release IR-2014-97 (Oct. 7, 2014).

56 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018); *see also* Veena K. Murthy, *Selected Cross-Border Equity and Deferred Compensation Issues with Fund Foreign Plans*, 42 Compensation

Planning Journal 67 (April 2014); Lawrence J. Chastang and Steve Yeager, *Foreign Pensions and Florida Practitioners*, Florida CPA Today (May/June 2013); Cynthia Blum, *Migrants with Retirement Plans: The Challenge of Harmonizing Tax Rules*, 17 Florida Tax Review (2015).

57 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 37.

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

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

60 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 39–40.

61 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 46.

62 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 47–48 (emphasis added).

63 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 49.

64 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 49.

65 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 50.

66 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 51.

67 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 52.

68 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 52.

69 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 53.

70 2017-97023, Tax Notes (Nov. 21, 2017).

71 *Remedy Sought for Taxation of Retirement Funds in Australia*, 2016 Tax Notes Today 178-29; Document 2016-18374 (Aug. 26, 2016).

72 *Dual Citizen Concerned About Australian Superannuation Funds*, 2014 Tax Notes Today 166-14; Document 2014-21016 (Aug. 11, 2014).

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

74 Annagabriella Colon, *IRS Guidance Eases U.S. Taxpayers' Information Reporting Duty*, 2020 Tax Notes Today Federal 42-3, Document 2020-8022 (Mar. 3, 2020).

75 Rev. Proc. 2020-17, Section 1.

76 Rev. Proc. 2020-17, Section 2.01 (referencing Code Sec. 6048(d)(4)).

77 Rev. Proc. 2020-17, Section 1. This IRS invites public comments about the types of foreign trusts that should benefit from the information-reporting exemption.

78 Rev. Proc. 2020-17; Section 5.02. The IRS expressly states that in determining the open period taxpayers do not need to consider the limitless assessment-period rule in Code Sec. 6501(c)(8) applicable when taxpayers fail to file a long list of international information returns.

79 Rev. Proc. 2020-17, Section 1.

80 Rev. Proc. 2020-17, Section 5.01.

81 Rev. Proc. 2020-17, Section 5.03.

82 Rev. Proc. 2020-17, Section 5.03(1).

83 Rev. Proc. 2020-17, Section 5.03(2).

84 Rev. Proc. 2020-17, Section 5.03(3).

85 Rev. Proc. 2020-17, Section 5.03(4). Taxpayers calculate these limits using the U.S. Treasury Bureau of Fiscal Service foreign currency conversion rate on the last day of the relevant tax year.

86 Rev. Proc. 2020-17, Section 5.03(5). This rule does not affect withdrawals, distributions, or payments for in-service loans or because of hardship, educational purposes, or purchase of a primary residence.

87 Rev. Proc. 2020-17, Section 5.03(6).

88 Rev. Proc. 2020-17, Section 5.03.

89 Rev. Proc. 2020-17, Section 5.04.

90 Rev. Proc. 2020-17, Section 5.04(1).

91 Rev. Proc. 2020-17, Section 5.04(2).

92 Rev. Proc. 2020-17, Section 5.04(3). Taxpayers calculate these limits using the U.S. Treasury Bureau of Fiscal Service foreign currency conversion rate on the last day of the relevant tax year.

93 Rev. Proc. 2020-17, Section 5.04(4). This rule does not affect withdrawals, distributions, or payments for in-service loans or because of hardship, educational purposes, or purchase of a primary residence.

94 Rev. Proc. 2020-17, Section 5.04.

95 Rev. Proc. 2020-17, Section 3.

96 Rev. Proc. 2020-17, Section 6.01. The IRS clarifies that this does not stop a taxpayer from seeking penalty relief (in the form of non-assessment, abatement, or refund) under any other applicable provision or procedure.

97 Rev. Proc. 2020-17, Section 6.02.

98 Rev. Proc. 2020-17, Section 6.03.

99 Rev. Proc. 2020-17, Section 7.

100 Code Sec. 6511(a); Reg. §301.6511(a)-1(a).

101 Rev. Proc. 2020-17, Section 5.02. The IRS expressly states that in determining the open period taxpayers do not need to consider the limitless assessment-period rule in Code Sec. 6501(c)(8) applicable when taxpayers fail to file a long list of international information returns.

102 Rev. Proc. 2020-17, Section 2.02; Rev. Proc. 2020-17, Section 3.

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

104 Hale E. Sheppard, *IRS Amnesty Covers More than Foreign Accounts: Analyzing the Updated Voluntary Disclosure Practice, New International Tax Withholding Procedure, and Guidelines for Late Returns by Foreign Corporations*, *taxes*, 2019, at 19; republished in Int'l Tax J. ___ (2019); *www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures*.

105 *See www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures-frequently-asked-questions-and-answers*.

106 Rev. Proc. 2020-17, Section 3; *see* Section V of Notice 97-34 and Rev. Proc. 2014-55.

107 U.S. Government Accountability Office. Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings. GAO-18-19 (Jan. 2018), at 53.