



TaxNewsFlash

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Proposed regulations: Guidance on information reporting on transactions with foreign trusts and large foreign gifts and transactions with foreign trusts

The U.S. Treasury Department and IRS today released [proposed regulations](#) (REG-124850-08) that would provide guidance under sections 643(i), 679, 6039F, 6048, and 6677 regarding information reporting on transactions with foreign trusts and receipt of large foreign gifts and regarding loans from, and uses of property of, foreign trusts, and amend the regulations relating to foreign trusts having one or more U.S. beneficiaries.

The proposed regulations are proposed to apply to transactions with foreign trusts and the receipt of foreign gifts in tax years beginning after the date on which the final regulations are published in the Federal Register. However, a taxpayer may rely on the proposed regulations for any tax year ending after May 8, 2024, and beginning on or before the date that final regulations are published in the Federal Register, provided that the taxpayer and all related persons (within the meaning of sections 267(b) and 707(b)(1)) apply the proposed regulations in their entirety and in a consistent manner for all tax years beginning with the first tax year of reliance until the applicability date of the final regulations.

KPMG observation

- The proposed regulations generally implement rules set forth in Notice 97-34, Rev. Proc. 2015-55, and Rev. Proc. 2020-17, with certain additions and other modifications. For example, the proposed regulations generally follow the exceptions provided under Rev. Proc. 2020-17, but have modified these rules to address comments received concerning the applicable contribution limitation thresholds and rules for tax-favored foreign retirement trusts that may allow limited contributions of unearned income, and have expanded this exception to apply to “tax-favored foreign de minimis savings trust.”
- Similar to the regulations under section 6038D, the proposed regulations provide special rules for a “dual resident taxpayer” (a foreign national who is considered a resident of the United States pursuant to the internal laws of the United States and also a resident of a treaty country pursuant to the treaty partner’s internal laws who computes U.S. income tax liability as a nonresident alien and complies with certain filing

requirements). Under the proposed regulations, a dual resident taxpayer is generally not treated as a U.S. person for any portion of the year the dual status taxpayer is treated as a nonresident alien.

- The proposed regulations include the rules under Notice 97-34 that U.S. persons are required to report a foreign gift from a foreign individual or estate only if the aggregate amount of foreign gifts from that foreign individual or foreign estate exceeds \$100,000 during the U.S. person's tax year, but consistent with the general rule under sections 6039F(a) and (d), U.S. persons must report foreign gifts from a foreign corporation or partnership if the aggregate value of such gifts during any tax year exceeds \$10,000, as modified by cost-of-living adjustments. Unlike Notice 97-34, however, the proposed regulations would adjust the \$100,000 threshold for reporting foreign gifts from foreign individuals or estates for cost-of-living adjustments.

Comments on the proposed regulations, as well as requests to speak and outlines for topics to be discussed at a public hearing (scheduled for August 21, 2024, at 10:00 AM ET), are due by the date that is 60 days after the proposed regulations are published in the Federal Register (which again is scheduled to be May 8, 2024). If no outlines are received by that date, the public hearing will be cancelled. Comments are specifically requested regarding whether qualified obligation rules are needed for loans of marketable securities and regarding the scope and application of the exception from section 643(i) distribution treatment for certain loans made by a foreign corporation.

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