

UNITED STATES DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

TELECONFERENCE PUBLIC HEARING ON PROPOSED  
REGULATIONS

"TRANSACTIONS WITH FOREIGN TRUSTS AND INFORMATION  
REPORTING ON TRANSACTIONS WITH FOREIGN TRUSTS AND  
LARGE FOREIGN GIFTS"

[REG-124850-08]

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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 MS. BANJANIN: Good morning. We're  
4 going to get started with this hearing. I'd like  
5 to welcome our speakers. Today is Tuesday, August  
6 21st, and this is the public hearing on  
7 Transactions with Foreign Trusts and Information  
8 Reporting on Transactions With Foreign Trusts and  
9 Large Foreign Gifts. These Proposed Regulations  
10 address Internal Revenue Code Sections 643(i),  
11 679, 6039F, 6048, and 6677.

12 The hearing is being held at the IRS  
13 Auditorium at 1111 Constitution Avenue Northwest,  
14 Washington, D.C. Participants are attending both  
15 in person and by teleconference. The government  
16 panel today consists of myself, my colleague Eva  
17 Wolf, who is a Senior Attorney in Branch 1 of the  
18 IRS Office of Associate Chief Counsel  
19 International, and Natalie Punchak, who is an  
20 Attorney Advisor in the Office of Tax Policy at  
21 the Department of Treasury. We were all actively  
22 engaged in the development of these Proposed

1 Regulations, and we look forward to hearing from  
2 our speakers today. We have two in person  
3 speakers today and four telephone speakers. There  
4 were some last minute changes, so I hope I have  
5 that correct.

6 First, we will have Henry Alden II and  
7 Karen Brodsky from the American Institute of CPAs,  
8 the AICPA. Second, we will have Kevin Matz from  
9 the American College of Trust and Estate Council,  
10 ACTEC. And on the phone we will have, first,  
11 Dennis Haszko. Second, Rebecca Lammers from  
12 Democrats Abroad. Third, John Richardson from  
13 Stop Extraterritorial American Taxation. And  
14 fourth and last, Gary Carter.

15 Each speaker or group of speakers will  
16 have 10 minutes to present, after which Natalie,  
17 Eva, and I may ask the speaker questions, or we  
18 may not. For those in person, there is a timer  
19 which is going to be up here when you're on the  
20 podium speaking, and there's a lighted indicator  
21 that will turn green, yellow, and then red. And  
22 when the light turns green, you can go ahead and

1 begin to speak, and the light will turn yellow,  
2 indicating that you have three minutes remaining.  
3 And when the light turns red, your time to present  
4 is over. And for those on the phone, you will be  
5 muted after 10 minutes whether you have finished  
6 speaking or not. So please ensure that you  
7 provide your input during those 10 minutes. There  
8 may be 1 minute warning, although I'm not entirely  
9 certain.

10 With that, I think we're finally ready  
11 to begin, and we can turn it over to our first  
12 speakers, Hank Alden and Karen Brodsky.

13 MR. ALDEN: Good morning. I'm Henry  
14 Alden, a CPA and managing member of Everest  
15 International Group, LLC. I'm the current chair  
16 of the American Institute of CPAs 135.20 Penalties  
17 Task Force. I'm joined by Karen Brodsky, a tax  
18 partner at Deloitte Tax LLP, and a current member  
19 and immediate past chair of the Task Force. Our  
20 testimony today is on behalf of the AICPA, the  
21 world's largest member association representing  
22 the CPA profession, with more than 400,000 members

1 in the United States and worldwide.

2           Because of the extreme importance of the  
3 regulations, Proposed Regulations, regarding  
4 Transactions with Foreign Trusts, Information  
5 Reporting on Transactions with Foreign Trusts, and  
6 Large Foreign Gifts, the AICPA submitted detailed  
7 comments to the Service on July 5. In our  
8 comments today, we will focus on several key  
9 areas. As initial comment, we appreciate the  
10 enormous amount of time that the Service is  
11 dedicated to drafting the Proposed Regulations  
12 that we are discussing today. We all recognize  
13 the need for additional guidance and clarity, and  
14 we at the AICPA fully support these efforts.

15           One of the primary objectives of our  
16 Task Force is to limit the number of individuals  
17 that we will refer to as rank-and-file taxpayers  
18 for being subject to the complex and costly  
19 reporting requirements under Sections 6048 and  
20 6039F. Another key focus of the AICPA is avoiding  
21 traps for the unwary. Unfortunately, penalties  
22 that are imposed for noncompliance with foreign

1 trust and gift reporting are among the highest in  
2 the code. In cases where taxpayers cannot obtain  
3 full relief from penalties, the results can be  
4 financially ruinous, especially considering that  
5 in the case of foreign pensions, these funds often  
6 cannot be reached by the taxpayer to satisfy their  
7 liabilities.

8           The first topic we would like to address  
9 is the reporting requirements for non-U.S.  
10 pensions. Perhaps no other aspect of the Proposed  
11 Regulations affects more individuals. The need  
12 for broad relief from the burdens and perils of  
13 information reporting under Section 6048 for  
14 Foreign Pension Trusts clearly is recognized and  
15 accepted by the Service, as evidenced by the  
16 exception for participation in a Canadian  
17 registered retirement savings plan. While Revenue  
18 Procedure 2020-17 and the Proposed Regulations  
19 offer expanded reporting exceptions, we believe  
20 the reliefs need to be expanded further. We  
21 recommend that the reporting exception for  
22 tax-favored form retirement trusts be expanded and

1 included as a separate category of pension plans  
2 that are located in certain treaty countries. We  
3 believe that where a tax treaty provides a tax  
4 exemption or tax deferral for a particular item, a  
5 similar reporting exemption should be allowed  
6 under Section 6048. Before these types of  
7 provisions are included in a tax treaty, the  
8 United States Treasury becomes fully familiar with  
9 the various forms of pension arrangements in the  
10 other jurisdiction and agrees to the release.

11 Next, I want to address our  
12 recommendation. That the Service eliminate the  
13 requirement in -5(b)(2)(3), that a foreign  
14 retirement plan may only permit contributions to  
15 be made with respect to earned income. This  
16 requirement severely limits the number of plans  
17 that will qualify for the exception to reporting  
18 under Section 6048, and it would fall harshly on  
19 numerous rank-and-file participants. Many foreign  
20 plans permit modest additional contributions to be  
21 made to a plan by our participants. Provisions  
22 such as this are not oriented towards highly paid



1 employees and are usually motivated in an effort  
2 to encourage rank and file employees to set aside  
3 additional sums for retirement. As an example,  
4 the U.S. allows tax favored contributions to be  
5 made to an individual retirement account by a  
6 non-working spouse who has no earned income. We  
7 believe that any of the concerns that the Service  
8 may have about removing the earned income  
9 requirement should be alleviated when the limiting  
10 effects on funding and benefits provided in  
11 -5(b)(2)(4) are considered.

12 We also wish to address a significant  
13 exposure and trap for the unwary posed by the list  
14 of requirements in the -5(2)(b) regulations, that  
15 a Foreign Pension Plan Must Satisfy Under the Laws  
16 Established in The Jurisdiction Governing The  
17 Trust. As presently drafted, those requirements  
18 must all be satisfied every year that the  
19 individual participates in the plan. Requiring a  
20 participant to monitor changes in governing law.  
21 We recommend that this rule not be applied in  
22 years where there are no contributions to the plan

1 prior for a participant.

2 MS. BRODSKY: All right, the second  
3 topic we'd like to address this morning is with  
4 respect to information reporting by U.S. persons  
5 receiving gifts from non-U.S. persons. We have  
6 several suggestions in this area. The first is  
7 the \$100,000 filing threshold for reporting these  
8 gifts was established in 1997, and we recommend  
9 that the threshold be increased to at least \$1  
10 million and be indexed for inflation. We also  
11 request an exception to Form 3520, Reporting for  
12 Gifts and Requests Between Spouses, especially  
13 where the recipient is a U.S. citizen. And we  
14 suggest that final guidance regarding reporting  
15 for gifts and bequests from covered ex-patriates  
16 on Form 3520 be paused pending the issuance of  
17 final regulations under Section 2801, which we  
18 understand are scheduled for later this year. Our  
19 final point on this topic is to encourage the  
20 creation of a new standalone form for reporting  
21 gifts, as we find that having the reporting on the  
22 same form as foreign trust transactions may lead

1 to confusion and missed filings.

2           The third topic we'd like to address  
3 this morning is with respect to penalty  
4 administration. Our letter includes detailed  
5 requests to incorporate into the regulations or  
6 into administrative procedures elsewhere specific  
7 rules for addressing tax payers who believe that  
8 they have reasonable cause to avoid the imposition  
9 of penalties. These requests include instituting  
10 a required review of the facts prior to the  
11 assessment of penalties and the adoption of a  
12 first time abatement or waiver. If adopted, we  
13 believe that our suggestions will substantially  
14 reduce the time and often considerable expense  
15 that taxpayers must incur in order to seek a  
16 waiver of penalties, as well as reduce the time  
17 that IRS personnel need to devote to specific  
18 cases. We also recommend alignment between  
19 various due dates to alleviate missed filing  
20 deadlines. In particular, the due date for Form  
21 3520 should be aligned with the due date of the  
22 filers income tax return in all cases, including

1 for individuals with an original due date of June  
2 15th and an extended due date of December 15th.

3 Our fourth item today pertains to the  
4 portions of the regulations that deal with loans  
5 and Section 643(i). Our letter also contains a  
6 number of suggestions on this topic, including the  
7 following: first, non-qualified obligation loans  
8 from a foreign trust that remain outstanding on  
9 the U.S. residency start date of a beneficiary  
10 should be treated as a distribution as of the date  
11 the loan was made rather than on the first day  
12 that the individual becomes a resident. We  
13 believe that the Proposed Regulations assume an  
14 unreasonable level of knowledge or information  
15 sharing between trust beneficiaries or between a  
16 trustee and a grantor or beneficiary regarding  
17 transactions that these individuals may not have  
18 been party to, and which may result under the  
19 Proposed Regulations in deemed distributions. We  
20 request that the Service consider incorporating  
21 the various suggestions from our letter when  
22 finalizing the regulations, including exceptions

1 for bona fide loans and loans that the beneficiary  
2 or grantor were not party to.

3 In addition, the Proposed Regulations  
4 address the application of previously taxed  
5 earnings and profits, or PTEP, rules in cases  
6 where a loan is made to a trust beneficiary by a  
7 foreign corporation that is subject to the CFC or  
8 PTEP rules. This was an area of considerable  
9 uncertainty, and we are pleased that this is  
10 addressed in the Proposed Regulations. However,  
11 there remains uncertainty regarding the taxation  
12 of actual distributions, and we recommend that  
13 PTEP be addressed in this context as well.

14 Our fifth topic this morning is with  
15 respect to methods used to compute us income tax  
16 on distributions from foreign trusts. Our  
17 comments on this topic in our letter should be  
18 read in the context of our view that a U.S.  
19 beneficiary receiving and reporting a distribution  
20 from a foreign trust should be able to utilize the  
21 actual method in as many cases as possible.

22 Our final point today is a request for

1 the Service to provide definitive guidance on how  
2 certain types of widely used non-U.S. Entities  
3 should be classified for U.S. tax purposes.  
4 Clarity with respect to properly classifying an  
5 entity will provide certainty regarding the  
6 related reporting requirements and will encourage  
7 compliance.

8 Thank you again for all your efforts in  
9 this area and for the opportunity for us to speak  
10 to you today. The AICPA Foreign Trust Penalties  
11 Task Force will be pleased to continue our  
12 dialogue on any of these issues.

13 MS. BANJANIN: Thank you. That's time.  
14 So second, we will have Kevin Matz from ACTEC.

15 MR. MATZ: Hello, I'm Kevin Matz.  
16 Partner at American College of Trust and Estate  
17 Counsel and ArentFox Schiff in New York City. I'm  
18 presenting today on behalf of the American College  
19 of Trust and States Council, ACTEC, on the Bank  
20 Treasury for picking up the very detailed  
21 regulations, Proposed Regulations, in this very  
22 complex area. I recognize it's a tremendous

1 amount of work. As submitted in comment letters,  
2 I'm going to focus on three primary areas. So the  
3 areas I'm going to focus on are as follows.  
4 Number one, that the proposed definition of  
5 qualified obligation set forth in Proposed  
6 Regulation 1.643(i)-2, should be liberalized.  
7 Second, that Treasury and IRS should adopt a more  
8 lenient approach when considering penalty  
9 abatements in connection with taxpayer reporting  
10 IRS Form 3520 and 3528. And then thirdly, and  
11 this is actually an area to decide Proposed  
12 Regulations, but actually preempts all of it, we  
13 suggest that Treasury Regulation 301.7701-4 should  
14 be amended to add a new provision that provides an  
15 entity or arrangement that function similar to a  
16 U.S. ordinary trust that described in Treasury  
17 Regulations Section 301.7701-4(a) can elect to be  
18 classified as a trust for federal income tax  
19 purposes similar to the rules that apply, the  
20 check the box rules, that apply for eligible  
21 business entities whereby they can elect  
22 classification under 301.7701-3(a).

1                   So the first proposed definition of  
2                   "qualified obligations" should be liberalized.  
3                   Statutory background Section 643(i) treats a loan  
4                   from a foreign trust to U.S. grantor or  
5                   beneficiary of the trust or -- this is very  
6                   significant -- to a person who's related to a U.S.  
7                   grant or beneficiary as being a distribution to  
8                   the U.S. grant or beneficiary except as provided  
9                   in regulations. Now, to the extent of the  
10                  required distribution treatment results the  
11                  attribution of a portion of the lending trust  
12                  current and previously accumulated income to the  
13                  borrower. There's concern here that the  
14                  application of Section 643(i) to the borrower, who  
15                  in fact has an enforceable note with no set terms,  
16                  may risk violating the due process clause under  
17                  the analysis of the Harper versus. the Business  
18                  Tax Commissioner case of Wisconsin case, and more  
19                  recently under Moore versus the United States,  
20                  both of which are US Supreme Court decisions.

21                         Now, perhaps anticipating the  
22                         possibility of such a due process challenge,



1 Congress, in enacting 643(i), granted the Treasury  
2 the authority to create exceptions to the  
3 application of Section 643(i), and stated its  
4 expectation that the Treasury would use this  
5 authority to create an exception for arms length  
6 loans reasonably expected to be repaid. Treasury  
7 in fact exercises authority in Proposed  
8 Regulations Section 1.643(i)-2 a by providing that  
9 a loan of cash will not be treated as a Section  
10 643(i) distribution if the loan is in exchange for  
11 a qualified obligation. The Proposed Regulations  
12 describe a set of stringent requirements for an  
13 obligation to be treated as a qualified  
14 obligation, including, among others, that the  
15 requirements alone have a term that does not  
16 exceed a term of five years.

17 Now, ACTEC suggests that the definition  
18 of "qualified obligation" be liberalized in order  
19 to better achieve the consistency with  
20 Congressional attempts in order to provide the  
21 exceptions to Section 643(i)'s application that  
22 may in fact be necessary to survive a due process

1 challenge. As step four of the ACTEC common  
2 letter, they include, among others, the following:  
3 Number one, require that the five-year maximum  
4 duration be extended to substitute for that 30  
5 year term. Second, eliminating the requirement  
6 that the loan be denominated in U.S. dollars as  
7 opposed to foreign currency. Third, deliberating  
8 the requirement of the interest rate on the loan  
9 and not be in excess of 130 percent of the  
10 applicable federal rate. And fourth, requiring a  
11 beneficiary's actual knowledge in connection with  
12 loans to related persons before extending the  
13 period for assessment.

14 Second topic I want to discuss concerns  
15 a more leaning approach to penalty abatement, and  
16 I'll request that that be adopted for taxpayers  
17 reported in the IRS Forms 3520 and 3520-a. As was  
18 discussed by the AICPA presenters, Proposed  
19 Regulations imposed upon taxpayers a general  
20 obligation in Form 3520 to report foreign gifts  
21 received that exceed an adequate amount of  
22 \$100,000 in taxable year. If you don't do that,

1 failure to report the subjective taxpayer to  
2 penalties of 5 percent a month for the amount of  
3 not reporting without going up to possibly as much  
4 as 25 percent in the aggregate. In addition to  
5 this "gift penalty," The IRS can also assess tax  
6 consequences based on all facts and circumstances  
7 presented.

8 Now, this gift penalty is problematic  
9 due not only to its high effective penalty amount  
10 but also as role the manner in which it would be  
11 applied by the IRS according to the Penalty  
12 Handbook of its Internal Revenue Manual. We  
13 recommend the Treasury be more lenient when  
14 considering penalty abatements under a reasonable  
15 cause argument act that suggests that Treasury  
16 respectfully consider the following: Number one,  
17 include the Proposed Regulations or a provision,  
18 or if not, instruct examiners to implement a  
19 policy that grants an automatic one time gift  
20 penalty abatement to taxpayers who fail to report  
21 a foreign gift on Form 3520 for the first time.  
22 We also suggest abatement where there's no

1 evidence of tax avoidance purpose in cases where  
2 the taxpayers have a history of tax compliance  
3 where there's no unreported income and also the  
4 taxpayer received erroneous advice from a tax  
5 professional -- bear in mind, this is a very  
6 complex area -- when the taxpayer did not know of  
7 reason to know that the source of property was a  
8 foreign person or foreign trust. Also request  
9 that examiners be instructed to allow taxpayers an  
10 opportunity to appeal the reasonable cause  
11 abatement -- key word before -- before the penalty  
12 is assessed, and postpone commencement of the  
13 accrual of continuing penalties until the appeal  
14 of the rejected.

15 Third, we recommend that a new question  
16 be added to the IRS Form 1040, Schedule D, that  
17 prompts, that asks, whether the taxpayers received  
18 any foreign gifts. And if the answer is yes, tell  
19 the taxpayer, by the way, you may need to fill out  
20 Form 3520. Would also note that these same issues  
21 also apply not just to foreign gifts, but also in  
22 connection with reporting the creation of foreign

1 trust, transfer of property to foreign trust, and  
2 also distributions of property from foreign trust.

3 Third and last area of time, it remains  
4 concerns recommending that a check to box election  
5 be adopted for trust treatment that should apply  
6 to structures that function similar to a U.S.  
7 "ordinary trust." Now, the Proposed Regulations  
8 address, in part, transactions of foreign trust,  
9 yet, as mentioned at the outset, there remains  
10 significant uncertainty whether certain foreign  
11 structures, such as foundations, are considered  
12 trust for U.S. tax purposes. Now, many of these  
13 structures are established in civil law countries  
14 that do not recognize trust at all and instead  
15 have enacted legislation to permit the  
16 establishment of structures that are similar to a  
17 trust. Again, these are, in many cases, civil law  
18 jurisdictions.

19 Now, we recommend that Treasury  
20 Regulation 301.7701-4 be amended to add a new  
21 provision. So this is not comments on the  
22 existing Proposed Regulations. This is broadening

1 the scope that provides that arrangement, we call  
2 it a structure, that functions similar to a U.S.  
3 ordinary trust, which is a term of art described  
4 in trade regulation as Section 301.7701-4(a), can  
5 elect to be classified as a trust for federal  
6 income tax purposes, similar to how an eligible  
7 business entity can be able to check the box  
8 election they elect tax classification under  
9 Treasury Regulation 301.7701-3(a).

10 I thank you all for your time and  
11 attention, and that concludes my comments. Thank  
12 you.

13 MS. BANJANIN: Thank you very much.  
14 Thank you to our in person speakers. Next, we  
15 will have our telephonic speakers. So first we  
16 will have Dennis Haszko. And, Dennis, please  
17 correct me if I am mispronouncing your last name.  
18 Thank you.

19 MR. HASZKO: The name is Haszko. It's  
20 misspelled on the list of speakers as -- as ending  
21 in "HO", but it ends in "KO". So you've got it  
22 correct. So thank you for the opportunity to

1 speak. I am a 56-year old electrical engineer  
2 patent attorney living in Ottawa, Ontario. I am  
3 representative of what was couched earlier as a  
4 rank-and-file taxpayer overseas citizen, so to  
5 speak, even though it's only Canada. I am  
6 representative of, by some estimates, over a  
7 million U.S. citizens that live in Canada. And I  
8 just wanted to make this real. I don't have an  
9 accounting background, so I won't speak to the  
10 particulars of certain things, but I'll speak to  
11 how retirement accounts affect me and how the  
12 rules of the IRS affect me. And one thing to keep  
13 in mind is years ago, 30 plus years ago, I began  
14 my career in the U.S. government in the Commerce  
15 Department. So I have the utmost appreciation and  
16 respect for what the IRS does and what everybody  
17 in that room that works for the IRS is up against.

18 But that said, like I said, I am a  
19 rank-and-file citizen here in Canada and the only  
20 reason I'm speaking, you know, I suppose the  
21 recent inspirational words from Michelle Obama,  
22 you know, I'd like to do something. So this is

1        what I'm doing. RSPs are the functional equipment  
2        of traditional IRAs. TFSAs are the functional  
3        equivalent of Roth IRAs. They are treated  
4        exceptionally different under IRS rules, and it  
5        represents a huge burden. Being an expat American  
6        outside the U.S., I am unfairly and unequally  
7        treated under the rules.

8                    As an example, the -- just going to --  
9        well, I'll back up. U.S. accountants are confused  
10       by IRS rules related to TFSAs, and Canadian  
11       accountants are confused by IRS rules related to  
12       TFSA's under treatment, and that's tax-free  
13       savings accounts. I'm sure you're aware of that.  
14       The issue is that I am blocked from utilizing  
15       tools that are available to every other resident  
16       of Canada, and I cannot actually properly prepare  
17       for my retirement in the same way that me, being  
18       on the other side of the border, in the U.S. would  
19       prepare normally. An example -- a few examples of  
20       that -- are, you know, that my financial situation  
21       is a plain vanilla situation. I have retirement  
22       accounts. I have an IRA. I have IRAs. I have



1 RSPs. I have plain checking accounts and plain  
2 savings accounts. I've gone to accountants before  
3 and simply being an expat American in Canada, and  
4 due to the extra paperwork related to filing, the  
5 cost of preparing returns in Canada is -- I've  
6 been given quotes of \$3-4,000 to do plain vanilla  
7 returns. Which is egregious, number one.

8           The other problem as an expat American  
9 is that I have been blocked out of transactions  
10 related to my current IRAs in the U.S. The  
11 Vanguard has precluded me from any transactions  
12 simply because they have a policy not to deal with  
13 non-resident Americans. Local broker back in  
14 Maine, where I was last resident, could not assist  
15 me in any manner. I -- it is -- it is a very  
16 strange Kafkaesque situation to be an American  
17 living in Canada. So my wish, my desire here, is  
18 that the Canadian TFSAs are treated fully as the  
19 functional equivalent of Roth IRAs. There is a  
20 carve out for RSPs in the IRS rules. So I would  
21 like to see a reporting exemption for TFSAs. That  
22 is my request in -- in my presentation. And I

1 just wanted to say that from the perspective of a  
2 purely rank-and-file user of the system, just an  
3 American that happens to be living in the other  
4 nation's capital up here in Canada.

5 Let's see, the -- so, you know, overall,  
6 that is the, that's the biggest concern of mine.  
7 TFSAs are not private trusts created to hide  
8 assets. They are a tool that's out in the open  
9 and that is heavily regulated in Canada. I'm  
10 aware that there's a lot of information shared  
11 between CRA and the IRS. There is absolutely no  
12 reason why TFSAs could not be treated the same way  
13 that Roth IRAs are treated. And the reporting  
14 requirements for TFSAs currently precludes me from  
15 utilizing that tool. And I know dozens of other  
16 expat Americans in Canada that have the same  
17 issues. And like I said, I am just a  
18 rank-and-file representative of over a million  
19 Americans, by some estimates, that live in Canada.

20 So thank you for listening to that, and  
21 I'd be happy to entertain any questions.

22 MS. BANJANIN: Thank you Mr. Haszko. I

1 will turn to my panelists now that we have our  
2 telephonic speakers to see if anybody has any  
3 questions.

4 MS. WOLF: Thanks, Laura. Mr. Haszko,  
5 can you hear me, okay?

6 MR. HASZKO: Yes.

7 MS. WOLF: Okay, I just have one  
8 question. So you brought up the Canadian TFSA.  
9 As I'm sure you are aware, -5(b)(5) of the 6048  
10 Reg sets forth a new category of exemption,  
11 tax-favored foreign de minimis savings trust.  
12 It's a long name. But do you read that exemption  
13 as applying to and excluding from the 6048  
14 reporting TSFAs that are treated as foreign  
15 trusts? And if not, it would benefit us to know  
16 why not. And just -- just to refresh you, I think  
17 that, like, the key distinction between the de  
18 minimis savings trust category and the retirement  
19 trust category is that the former doesn't need to  
20 have been established to operate for foreign  
21 pension or retirement benefits. So there's not  
22 that requirement. But there is an aggregate value

1 of the trust requirement. So the value can't  
2 exceed \$50K at any time during the year.

3 So we're just wondering whether that  
4 category, that new category that didn't exist in  
5 the Revenue Procedure, but does exist in the  
6 Proposed Regs, helps in any way. And if not, why  
7 not? And if you can't answer, that's okay too.  
8 Thank you.

9 MR. HASZKO: Well, there's probably  
10 other people that are speaking that could answer  
11 that question better than me. As I said, I'm not  
12 an accountant. I don't have the background. But  
13 one of the things that is constant is that there  
14 is not enough education, not enough distribution  
15 of the realities to accountants. So accountants  
16 are clueless in Canada regarding these matters.  
17 Accountants in the U.S. don't have any vested  
18 interest to deal with expat Americans. So I can't  
19 speak to your direct question, but I would -- I  
20 would hope that it is, you know, the new, you  
21 know, Proposed Regs actually clarify things. But  
22 it needs to be explicit that TFSAs are exempted

1 from reporting requirements.

2 MS. WOLF: Okay. Thank you so much.

3 MR. HASZKO: Thank you.

4 MS. BANJANIN: Thank you very much, Mr.  
5 Haszko. We will now turn to our second speaker  
6 over the phone, Rebecca Lammers from Democrats  
7 Abroad, please.

8 MS. LAMMERS: Yes. Can you hear me?

9 MS. BANJANIN: Yes, we can hear you.

10 MS. LAMMERS: Okay, thank you. Thank  
11 you for the opportunity to speak at this important  
12 hearing. My name is Rebecca Lammers. I'm  
13 originally from Ohio and now live in London,  
14 United Kingdom. I'm a proud volunteer for an  
15 organization called Democrats Abroad, and I lead  
16 our dedicated group called the Taxation Task  
17 Force.

18 Just to introduce us, Democrats Abroad  
19 is a volunteer led grassroots organization with  
20 200,000 U.S. citizen members all over the world,  
21 and we're the largest American abroad  
22 organization. Democrats Abroad conducted a survey

1 in 2022 of nearly 7,000 Americans abroad, and the  
2 inability to save and invest was one of the top  
3 three problems reported. We also get absolutely  
4 bombarded with emails and calls asking for help to  
5 resolve the tax and financial access problems. So  
6 in May, when the comment period opened for these  
7 Proposed Regs, we submitted our own comment. But  
8 we also asked our members and all Americans abroad  
9 to submit comments on how they they've been  
10 impacted by these reporting requirements. And we  
11 were surprised and happy to see an overwhelming  
12 grassroots response. We were the ones responsible  
13 for the majority of the 1,500 comments submitted  
14 for the comment period.

15 All American citizens should have the  
16 right to save for their retirement regardless of  
17 where they live. This includes Americans abroad.  
18 We are frequently and unfairly stereotyped as rich  
19 leaving the country to evade taxes. The reality  
20 is that the majority are low- to middle-class  
21 class who mostly leave the country for work,  
22 family, or school. Unfortunately, Americans

1       abroad get caught up in a complicated web of  
2       international tax and reporting requirements with  
3       the IRS. This creates barriers for Americans  
4       abroad to save for retirement.

5                 One of the biggest issues is that some  
6       non-U.S. pensions may be reportable as quote  
7       "foreign trusts" to the IRS. This triggers  
8       reporting on Forms 3520 and 3520(a). But our  
9       pensions aren't foreign trusts, they're just  
10      pensions. Many of us do not understand why our  
11      retirement and savings accounts may be classified  
12      as a trust in the first place. Many countries  
13      don't even have trust. So for the U.S. to view  
14      these financial products as trust just doesn't  
15      make sense from the start. And what is foreign  
16      from a U.S. perspective is local for us.

17                Many Americans abroad have no other  
18      choice than to save in a savings or retirement  
19      account in their country of residence. Some  
20      countries don't even allow opting out of an  
21      employer pension plan, and sending retirement  
22      savings back to the U.S. is generally not legally

1 possible due to local statutes and regulations.  
2 So because of the confusion about whether a local  
3 to us non-US. retirement or savings plan is or  
4 isn't deemed a foreign trust from the U.S. side,  
5 many people end up putting off saving for their  
6 future retirement. This particularly  
7 disadvantages low-and middle- income Americans  
8 abroad who are the least able to pay for  
9 professional and may end up without adequate  
10 savings at retirement.

11 For taxpayers abroad, the level of  
12 awareness of this obscure reporting requirement is  
13 minimal at best. An American abroad's first port  
14 of call is frequently their local embassy or  
15 consulate, but they don't provide any support.  
16 That's the IRS' job. But if you look at the  
17 quintessential guide for taxpayers abroad, IRS  
18 Publication 54, there is no mention of this. Many  
19 file their tax returns simply not knowing they are  
20 subject to reporting of their non-U.S. pension or,  
21 once they find out, live in fear given the lack of  
22 clarity around the reporting requirements and



1 potential penalties. This is a breach of the  
2 first of the taxpayer bill of rights. The right  
3 to be informed. Not filing foreign trust forms  
4 also comes with the risk of devastating penalties.  
5 It's like Russian roulette whether the IRS will  
6 take a third of someone's life savings for a  
7 genuinely innocent filing mistake. So once you  
8 know about it, there's still confusion on what's  
9 reportable. Like when a taxpayer seeks guidance  
10 on how to report their non-U.S. savings or  
11 retirement accounts, one can speak to multiple  
12 different tax preparers and they will all have a  
13 different interpretation of whether a particular  
14 account is subject to foreign trust reporting or  
15 not. Tax professionals themselves admit not  
16 understanding these reporting requirements. They  
17 will disagree on whether many of these accounts  
18 fit the definition of a trust or not, and so some  
19 people go ahead and report them anyway in the  
20 abundance of caution due to fear about the risk of  
21 life changing penalties.

22                   Nothing is clear. Everything is

1       ambiguous. If there's no consensus, even in the  
2       expat tax professional community, how is someone  
3       supposed to know if the way they're advised to  
4       report is correct? This is, at its core, one of  
5       the major problems with both the current practice  
6       and the proposed regulations. Individual  
7       taxpayers do not have the capacity to determine  
8       whether their retirement plan would be considered  
9       a "qualified tax favored foreign retirement  
10      trust." Their only option is to pay for an  
11      opinion from an accountant or lawyer, which is  
12      only an enormous financial burden, but also  
13      provides only an opinion which may or may not be  
14      disputed later. And tax professionals tell us  
15      that individual taxpayers are typically unable to  
16      complete Form 3520 on their own because it's just  
17      too complicated. This forces taxpayers into  
18      paying a professional and adds an additional \$200  
19      to \$600 to their already complicated and expensive  
20      tax preparation costs. Just to point out that  
21      non-U.S. savings and retirement accounts are  
22      already reported on " specified foreign financial

1 assets" on Form 8938. So foreign trust reporting  
2 on 3520 and 3520(a) Adds no value from a tax  
3 administration perspective.

4 We believe that non-U.S. retirement and  
5 savings have been accidentally caught up in the  
6 foreign trust regulations, and it wasn't intended  
7 for these accounts to be subject to foreign trust  
8 reporting in the first place. The background  
9 section preceding the Proposed Regulations did a  
10 great job summarizing the legislative history.  
11 Congress implemented foreign trust reporting to  
12 combat abusive tax schemes where U.S. resident  
13 taxpayers were using foreign trusts to transfer  
14 large amounts of assets to tax havens. It was  
15 clearly not the intent of Congress to regulate or  
16 penalize non-U.S. pensions or retirement accounts.  
17 If they had intended that, they would have said  
18 so.

19 The law is clear, but the regulations  
20 are not. Even the attempts in these Proposed Regs  
21 are unclear. So the Proposed Regs aim to reduce  
22 reporting requirements by introducing exemptions

1 for " tax-favored foreign retirement trusts and  
2 tax-favored foreign non-retirement savings  
3 trusts." What a mouthful. But we still think the  
4 Proposed regs will result in continued ambiguity,  
5 ambiguity and confusion. The uncertainty inherent  
6 in the statute and the Proposed Regs is a major  
7 issue for taxpayers, professional preparers, and  
8 for the IRS itself. We must ensure that pensions  
9 are treated as what they are pensions.

10 So the Proposed Regs do not address the  
11 core of the problem, that non-U.S. pensions  
12 shouldn't be treated as a trust. These Proposed  
13 Regs are a good step in the right direction, but  
14 we still have some major concerns. On a high  
15 level, it feels like we're trying to fit a square  
16 peg in a round hole. First because the Proposed  
17 Regs still treat non-U.S. pensions as foreign  
18 trusts when they're not, but secondly because  
19 non-U.S. pensions have rules and regulations that  
20 function in a way that makes sense for residents  
21 in their country. So, for example, there's an  
22 attempt in the Proposed Regs to allow limited

1 contributions from unearned income, but it still  
2 limits Americans abroad from being able to  
3 contribute from -- from certain other sources  
4 allowed in some countries. Another issue, it's  
5 not clear if the various monetary thresholds apply  
6 on an individual basis or based on the account  
7 limit. And then how is someone supposed to stay  
8 within the contribution limits if they don't  
9 control currency fluctuations? These areas need  
10 to be addressed to provide the clarity that  
11 Americans abroad are so desperately seeking from  
12 the IRS.

13           Additionally, we have two key  
14 recommendations that may fall out of the  
15 anticipation scope for these regs, but I think are  
16 worth mentioning here anyway. First, the  
17 regulation should state the general presumption  
18 that trust reporting is not required for non-U.S.  
19 pensions and retirement accounts. All non-U.S  
20 pensions are reportable on Form --

21           OPERATOR: 1 minute remaining.

22           MS. LAMMERS: So the foreign trust

1 reporting is duplicative and can be eliminated  
2 without material loss of transparency. The IRS  
3 can reserve the right to specify any particular  
4 schemes that are deemed to be problematic, like  
5 the multi-pension, and should be separately  
6 reported. Secondly, clarify which accounts do and  
7 don't need to be reported. If this is too arduous  
8 a task, then at least start with the top 10  
9 countries with the largest U.S. citizen  
10 populations. Mexico, Canada, the UK, Germany,  
11 Australia, Israel, South Korea, France, Japan, and  
12 Spain would be a great start. This is the level  
13 of clarity that would be required for ordinary  
14 low- to middle-income Americans abroad to be able  
15 to understand and comply with the rules.

16 So, to summarize, we want clarity and we  
17 want to be informed. But more to the point, we  
18 want our pensions to be treated as pensions and  
19 not caught up in these foreign trust reporting  
20 requirements. Thank you again for holding this  
21 hearing, and I greatly appreciate being able to  
22 speak to you today.

1                   MS. BANJANIN: Thank you, Ms. Lammers.  
2                   Any questions? Thank you very much. We will now  
3                   move on to our third speaker on the telephone, Mr.  
4                   John Richardson from Stop Extraterritorial  
5                   American Taxation. Mr. Richardson, are you on the  
6                   line?

7                   MR. RICHARDSON: Hello?

8                   MS. BANJANIN: Mr. Richardson, can you  
9                   hear us?

10                  MR. RICHARDSON: Yes. Yeah, I can hear  
11                  you. Can you hear me?

12                  MS. BANJANIN: Yes, we can now hear you.  
13                  You have the floor, sir.

14                  MR. RICHARDSON: Okay, wonderful. Okay.  
15                  So, good morning. Thanks for the opportunity to  
16                  participate, and thank you for all my  
17                  predecessors. I'm going to modify what I was  
18                  planning to say a little bit, okay, to just play  
19                  off other things that have been said.

20                  First of all, I absolutely agree and  
21                  applaud every single -- the content of every  
22                  speaker up until now. If anything, I think that

1 perhaps they haven't gone far enough in expressing  
2 the difficulties for Americans abroad, but I'll  
3 get to that.

4           Anyway, I'm John Richardson. I am here  
5 today on behalf of SEAT, Stop Extraterritorial  
6 American Taxation, Now, which is sort of an  
7 educational advocacy organization. My comments  
8 then necessarily are from the perspective of  
9 Americans abroad and, therefore, I will speak only  
10 to Proposed Regs and relations 648 and 639(f).  
11 I'm going to go with 648 first because if I run  
12 out of time, I simply reiterate every single thing  
13 that has been said in relation to the foreign gift  
14 rules, well said. I think I would add to that.  
15 There's only one thing I would add to that, and  
16 that is that if these rules are really applied  
17 strictly, then presumably they would apply to cost  
18 of living expenses that are given -- that are  
19 received from a foreign house that exceed, you  
20 know, what would be reasonable. So this is a big  
21 problem. But let's go back to the beginning.

22           This all starts with the 1996 amendments



1 to the Internal Revenue Code. We know what was  
2 going on, and we know what Section 648 was  
3 assigned to remedy. And that's specifically with  
4 U.S. residents who are moving money outside of the  
5 United States into foreign trusts, keeping them  
6 out of the U.S. tax system, et cetera. There was  
7 no indication, I didn't even think of thought,  
8 okay, as to how this stuff might apply to  
9 Americans abroad. And I strongly suspect, given  
10 the difference between the circumstances of U.S.  
11 residents trying to hide money and Americans  
12 abroad trying to save for retirement, I strongly  
13 suspect that had that been raised, this law would  
14 have been written with some kind of an exception.  
15 But make no mistake, I mean, as Treasury's own  
16 summary of this makes clear, these rules are never  
17 intended to apply to lives of Americans abroad who  
18 are just trying to live normal lives.

19 As Rebecca said, you know, there's no  
20 question that this causes Americans abroad huge  
21 stress and anxiety. What it amounts to is a  
22 certain penalty for undefined, uncertain conduct,

1 and people will actually refrain from responsible  
2 financial planning. I hear Americans say, I can't  
3 do financial planning. I'm an American, I can't.  
4 You know, and this is, you know, this is obviously  
5 ridiculous. Americans abroad, because of the  
6 uncertainty, live what I would call not under the  
7 sword of Damocles, which we all have heard of, but  
8 I would say rather the sword of penalties. And I  
9 am well aware of people who have renounced U.S.  
10 citizenship over only the Form 3520 filing issue,  
11 being frightened of getting a penalty.

12 So basically, the objective, as Rebecca  
13 and others have said, I'll put it slightly  
14 differently, is this: That in the United States,  
15 pensions, IRAs, et cetera, are forces -- they are  
16 avenues of security. For Americans abroad,  
17 pensions, tax-favored savings accounts basically  
18 are a source of anxiety. And I think the goal has  
19 got to be that Americans abroad have exactly the  
20 same kind of certainty in relation to their  
21 financial planning that U.S. residents have. And  
22 the question becomes, how can these Proposed

1 Regulations facilitate those objectives?

2 I want to echo what Rebecca said. I  
3 mean, I know a lot about sort of Americans on the  
4 ground who are middle class trying to comply with  
5 their U.S. tax obligations and finding it  
6 impossible. I also know that there is no  
7 agreement on what these 648 rules expressed in  
8 Form 3520 even apply to. Some tax preparers take  
9 the position yes, some no. Some take positions  
10 without even understanding what the issue is. And  
11 very few of them on the retail level that people  
12 use, you know, the sort of \$500 tax return, which  
13 is the low end for Americans abroad, are going to  
14 have tax preparers who are (inaudible) to figure  
15 this out. One exception, though. We're going to  
16 be hearing from CPA Gary Carter in a moment, who  
17 has been a real superstar in this area and a great  
18 deal of help. So shout out to Gary in advance.

19 At this point, I understand and applaud  
20 Treasury for the efforts that it made in 2020 to  
21 the 2017 Rev. Proc. and that they continue to  
22 make. But rather than see this as a question of

1       trying to figure out the technicalities, how to  
2       achieve this, I would suggest that at this point,  
3       Treasury has a moral obligation to protect  
4       individual citizens, Americans abroad, from a tax  
5       compliance industry that has no idea how to deal  
6       with this stuff through no fault of their own,  
7       which often results an improper filing of Form  
8       3520 one way or the other. And believe me, the  
9       filing of 3520, when you don't have to, it's not  
10      timely, it can lead to a penalty in a situation  
11      where you never had to file it to begin with.

12                 But in any case, my main points here are  
13      as follows. And they're separate points, they're  
14      in distinct parts. I'm going a little further  
15      than previous speakers, although I agree with  
16      them, and get Rebecca from Democrats Abroad. But  
17      I'm going to say flat out, I would encourage  
18      Treasury to adopt a rule that foreign pension  
19      plans and accounts that are tax favored under the  
20      laws of the country where somebody lives in should  
21      be completely exempt from 3520 and the application  
22      of 6048. And there's all kinds of reasons for

1 this, but mainly because it's going to avoid the  
2 distracting issue of what is a trust, what is not  
3 a trust, et cetera. I mean, does this really  
4 matter? Isn't the issue really how does this  
5 particular product or investing in this type of  
6 thing, what is it designed to facilitate? It's  
7 not tax evasion, obviously, because things are  
8 regulated. These are exactly the same types of  
9 things that have their functional equivalent in  
10 the United States. There may be technical  
11 difference, but there is no functional difference.  
12 And there's certainly no risk of tax evasion in  
13 either way.

14 Another reason, the average tax  
15 preparer, look, it's time to just understand that  
16 this stuff is too difficult for them to figure  
17 out, you know. The meaning of trust, I mean, for  
18 starters, that means the U.S. meaning of trust.  
19 You know, that doesn't mean, you know, what's a  
20 trust in Canada or the U.K. or something like  
21 that. So that's part of the problem.

22 Secondly, the cost of filing the form is

1 enormous. Enormous.

2 Thirdly, as Rebecca points out, it is  
3 redundant information. There is absolutely no  
4 question in my mind that these things are  
5 reportable on Form 8938. All you need to do if  
6 you want more information is change the directions  
7 to Form 8938 to require an annual account balance  
8 rather than zero if they're not, you know,  
9 presently receiving the pension, which they  
10 usually aren't. And obviously, this is just  
11 duplicate information for everybody.

12 Now, Rev. Proc. 20 -- 2017, whatever  
13 that was, was a great start. A great start. And  
14 Treasury should be applauded for that. However,  
15 let me tell you why I think it can't work or can't  
16 work very well.

17 First of all, the rule's too difficult  
18 to understand. Okay? Taxpayers have trouble.  
19 Tax preparers have trouble. But more importantly,  
20 the rules are applied in relation to products in  
21 other countries, and a tax preparer has to  
22 understand the rules of the product in the other

1 country. And it's completely unreasonable to  
2 expect a U.S. resident taxpayer to take that step  
3 to figure out, you know, what are the exact  
4 characteristics of a Canadian TFSA, a U.K. ISA, a  
5 Kiwi -- a New Zealand Kiwi Save, or whatever these  
6 things are. So I say again, these things should  
7 just be flat out exempted from 6048, 3520  
8 reporting without regard to whether they're a  
9 trust or not.

10 Now, a model for how to do this. When I  
11 --

12 OPERATOR: One minute remaining.

13 MR. RICHARDSON: Okay. What you need to  
14 do is go to Rev. Proc. 2014-55. There's a model  
15 for how to do that, how it was done with the  
16 Canadian TFSA. You don't want a blanket  
17 exemption, anything that's exempt under a FATCA or  
18 adds to a FATCA, IGAs, anything that meets the  
19 requirements under the law of another country as a  
20 tax-favored account or anything exempt from a tax  
21 treaty.

22 I'm happy to answer any questions you

1 have.

2 MS. BANJANIN: Thank you, Mr.  
3 Richardson. Pamela, do you have any questions at  
4 this time? Thank you very much for your time.

5 We will now have our fourth and final  
6 speaker, Mr. Gary Carter, please.

7 MR. CARTER: All right. Well, I  
8 appreciate the opportunity to speak. I think I'm  
9 going to have to speak really fast because I'm  
10 going to get cut off here.

11 I'm a CPA practicing in Minnesota. I  
12 run a small niche tax firm that focuses primarily  
13 on foreign nationals and U.S. Expats. My  
14 comments are focused solely on Reg. 6048-5(b)  
15 relating to U.S. individuals who own foreign --  
16 tax-favored foreign trust.

17 My plea is simply to give us certainty  
18 in the final requirements for these accounts.  
19 These types of accounts are extremely popular  
20 worldwide, so just about every one of my foreign  
21 national clients who has decided to work and live  
22 in the United States has a potential Section 6048



1 filing requirements to deal with. None of these  
2 individuals are U.S. citizens seeking to hide  
3 assets from the IRS. All of them established  
4 their taxpayer accounts under the laws of strict  
5 control of their home countries prior to becoming  
6 United States tax residents. But intent is not  
7 factored into Section 6048. So we analyze the  
8 requirements for each client with a taxpayer  
9 account to determine if the filing requirements  
10 apply.

11 We start by determining if an employee's  
12 -- or if it's an employee's trust eligible for an  
13 exemption. If it's not, we then analyze whether  
14 it's actually a trust. The term "trust" is not  
15 defined in the Internal Revenue Code, but we do  
16 find a definition of, you know, a trust in  
17 longstanding Treasury Reg. 301.7701-4(a), which  
18 looks to common law principles to define an  
19 ordinary trust. I won't take the time to read the  
20 reg, but to recap, there must be a trustee who  
21 takes title to property for the purpose of  
22 protecting or conserving with the beneficiaries

1 under the ordinary rules applied in chancery or  
2 probate courts. The general duties of a trustee  
3 include fiduciary responsibility to the  
4 beneficiaries. The reg also requires the trustee  
5 be in control of the trust investments rather than  
6 the grantor or the beneficiaries.

7 Most of the so-called foreign trusts  
8 owned by my clients are merely accounts authorized  
9 by the governments of the host countries to  
10 provide tax benefits. They're not arrangements as  
11 described in Reg. Section 301.7701-4(a), where  
12 there's a trustee acting as a fiduciary. So if we  
13 see evidence that a foreign tax-favored account  
14 does not have the attributes required by Reg.  
15 301.7701-4(a), we advise our clients that Forms  
16 3520 and 3528 are not required. But there's been  
17 virtually no guidance from the IRS on whether any  
18 of these accounts are considered foreign trusts in  
19 the Service's view, and most practitioners who are  
20 aware of the filing requirements take a very  
21 cautious approach.

22 U.S. taxpayers, for the most part,

1 simply want to do the right thing. A case in  
2 point, last year I took a case to appeals for late  
3 filed Forms 3520 and 3528, for which the client  
4 received two CP15 penalty notices. The client had  
5 a Canadian TFSA and had been told by his preparer  
6 that forms 3520 and 3528 were required, but the  
7 preparer and the preparer's firm did not prepare  
8 those particular forms. So the client was simply  
9 trying to do the right thing by filling out the  
10 forms himself and sending them in except he was a  
11 few days late.

12 He received the CP15 notice about two  
13 years later, charging him \$20,000 for late filing.  
14 He came to me for help after submitting a  
15 reasonable cause statement, which was rejected by  
16 examinations. I suggested that we argue on appeal  
17 that the forms were not required in the first  
18 place because the TFSA is not a foreign trust.  
19 The TFSA is not a separate entity, there is no  
20 trustee, and, consequently, does not meet the  
21 definition of a foreign trust.

22 When the issue was finally taken up by

1 appeals in 2023, the appellate officer agreed with  
2 my argument almost immediately and canceled the  
3 penalties and did tell us that this is a  
4 (inaudible). Still, an untold number of forms  
5 3520 and 3528 are prepared annually by cautious  
6 tax practitioners and well-intentioned clients who  
7 own Canadian TFSAs, because of a complete lack of  
8 clarity about the filing requirements.

9           The post Reg. 6048-5(b), which presumes  
10 to offer clarification and release from filing for  
11 certain tax-favored foreign trust, I believe it  
12 fails. It falls short of those goals. The  
13 background of the Proposed Regs explains why  
14 taxpayers with foreign trusts should be exempt  
15 from reporting. These foreign trusts, according  
16 to background, generally are subject to written  
17 restrictions, such as contribution limitations,  
18 conditions for withdrawal, and information  
19 reporting under the laws of the country in which  
20 they are established that are broadly consistent  
21 with the eligibility requirements in the code for  
22 U.S. trusts serving similar policy goals. But

1       rather than simply accepting the terms imposed on  
2       the laws of the country where trusts are  
3       established as adequate safeguards for abuse, the  
4       Proposed Reg contains universal conditions and  
5       limitations that require in-depth research and  
6       data analysis that have no implications for  
7       potential abuse.

8                 For example, the Proposed Reg requires  
9       that a tax-favored foreign retirement trust can  
10       accept only contributions with respect to income  
11       earned from the performance of personal services,  
12       except for allowances for limited contributions by  
13       unemployed individuals. Why is this required? If  
14       a practitioner searches this requirement in a  
15       foreign retirement trust agreement and fails to  
16       find it, there's no relief from filing forms 3520  
17       and 3528, even though the absence of this  
18       requirement does not indicate any apparent  
19       potential for abuse.

20                Another example for employer-maintained  
21       tax-favored foreign retirement trusts, the  
22       Proposed Reg requires that the trust be

1 nondiscriminatory for a wide range of employees,  
2 including rank and file employees under the terms  
3 of trust, and that the trust actually provides  
4 significant benefits for a substantial majority of  
5 eligible employees and the benefits actually  
6 provided under the trust are not discriminatory.  
7 How is a U.S. tax practitioner supposed to  
8 research and confirm these requirements? I can  
9 see practitioners reading this and then just  
10 filling out the form because there's no way these  
11 conditions can be verified.

12           It is good, it's a good thing that you  
13 seek to exempt tax-favored foreign trusts from the  
14 authority of -- under the authority of section  
15 6048(d)4, and there must be a screening process  
16 for the trusts that are eligible for the  
17 exemption. But the vetting process in the  
18 Proposed Reg destroys the effectiveness of the  
19 potential exemption. Easily identifiable,  
20 verifiable, and country-specific criteria would  
21 create certainty for taxpayers and the IRS alike.

22           And actually that vetting has been done

1 already in Reg. Section 1.1471-5(b)2 and in the  
2 model FATCA IGA and specifically in IGAs that the  
3 U.S. has signed with 113 countries so far. FATCA  
4 introduced Section 1471 into the Code in 2010.  
5 FATCA was intended to combat that offshore tax  
6 evasion by U.S. persons with offshore financial  
7 accounts by requiring foreign financial  
8 institutions to report to the IRS information  
9 about financial accounts held by U.S. taxpayers.

10 Section 1471(d)2, in defining financial  
11 account, defers to the Treasury the authority to  
12 define the types of accounts that are excluded  
13 from this definition and legislative Reg. Section  
14 1.1471-5(b)2 provides the exceptions, which  
15 include tax-favored retirement accounts and  
16 tax-favored non-retirement savings accounts. The  
17 purpose for excluding these accounts under FATCA  
18 is exactly the same for excluding them under  
19 Section 6048. They pose no threat of tax evasion.

20 The conditions under Reg. 1.1471-5(b)2  
21 are verifiable standards, all of which are  
22 contained in the current reg -- Proposed Reg.

1 1.6048-5(b). In annex 2 of each IGA, there's a  
2 section titled Accounts Excluded from Financial  
3 Accounts or exempt accounts. The section lists  
4 the country-specific tax-favored retirement and  
5 savings accounts that are excluded from the  
6 definition of financial account for purposes of  
7 defining a United States account for which FATCA  
8 reporting is required.

9 OPERATOR: One minute remaining.

10 MR. CARTER: An example is the Canadian  
11 IGA, and under the Canadian IGA, it exempts from  
12 reporting registered retirement income funds,  
13 pooled registered pension funds, registered  
14 pension plans, tax-free savings accounts, TFSAs  
15 and RESPs. If this IGA could serve as a reference  
16 for U.S. residents owning Canadian taxpayer  
17 retirement or savings accounts to understand the  
18 reporting requirements under Section 6048 would  
19 provide tax certainty and decrease the filing  
20 burden for thousands of taxpayers. The same would  
21 apply for taxpayers owning accounts in every IGA  
22 partner country, for accounts not within the



1 authority of an IGA partner to model IGA and Reg.  
2 1.1471-5(b) provide verifiable standards for the  
3 exemption to -- for exemption eligibility.

4 MS. BANJANIN: Thank you for your  
5 comments, Mr. Carter.

6 OPERATOR: Excuse me. Ms. Hayes, I am  
7 having a hard time hearing you.

8 MS. BANJANIN: Can you hear me now?

9 OPERATOR: Yes, much better. Thank you.

10 MS. BANJANIN: Okay, thank you. Sorry  
11 about that. I just was thanking Mr. Carter for  
12 his comments and wanted to see if we had any  
13 questions, but it sounds like we don't at this  
14 time. Okay.

15 Those were the speakers that we had  
16 scheduled to speak today. Would anyone else care  
17 to make a brief comment at this hearing for our  
18 consideration?

19 I think that silence is a no. So we  
20 thank everyone for attending the hearing both in  
21 person and over the phone, and the hearing is now  
22 concluded.

1 (Whereupon, at 11:16 a.m., the  
2 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 DISTRICT OF COLUMBIA

3 I, Mark Mahoney, notary public in and for  
4 the District of Columbia, do hereby certify that  
5 the forgoing PROCEEDING was duly recorded and  
6 thereafter reduced to print under my direction;  
7 that the witnesses were sworn to tell the truth  
8 under penalty of perjury; that said transcript is a  
9 true record of the testimony given by witnesses;  
10 that I am neither counsel for, related to, nor  
11 employed by any of the parties to the action in  
12 which this proceeding was called; and, furthermore,  
13 that I am not a relative or employee of any  
14 attorney or counsel employed by the parties hereto,  
15 nor financially or otherwise interested in the  
16 outcome of this action.

17  
18

19 (Signature and Seal on File)  
20 -----

21 Notary Public, in and for the District of Columbia  
22 My Commission Expires: May 31, 2026