


2024
NATIONAL INCOME TAX
WORKBOOK

CHAPTER 14: INTERNATIONAL TAX ISSUES



1

TOPICS P. 535

1. Individual Taxpayer Identification Number
2. Foreign Investment in Real Property Tax Act
3. Gifts or Bequest from a foreign person
4. Report of Foreign Bank and Financial Accounts (FBAR)
5. Form 1040-NR

2

LEARNING OBJECTIVES P. 525

- ✓ Know how a taxpayer obtains an individual taxpayer identification number
- ✓ Understand when withholding is required on the disposition of US real property
- ✓ Explain the reporting requirements for gifts or bequests from a foreign person
- ✓ Know when a taxpayer must report foreign bank and financial interests
- ✓ Understand the key differences between Form 1040 and Form 1040-NR

3

ISSUE 1: INDIVIDUAL TAXPAYER IDENTIFICATION # P. 527

9-digit ID # for taxpayer ineligible for SSN

Submit Form W-7

- Documentation of foreign status and identity – usually a passport
- Reason for applying – supporting documentation

4

ISSUE 1: INDIVIDUAL TAXPAYER IDENTIFICATION # P. 527

Documentation of Foreign Status

- Original document
- Copy certified by foreign government office
- Present documents to CAA

5

ISSUE 1: INDIVIDUAL TAXPAYER IDENTIFICATION # P. 527

File W-7 with a US tax return

Exceptions:

- 3rd party reporting of mortgage interest
- gambling income
- withholding

6

ITIN FOR SPOUSE AND DEPENDENTS P. 528

To claim allowable tax benefit

- Head of household (HOH)
- American opportunity tax credit (AOTC)
- Premium tax credit (PTC)
- Child and dependent care credit (CDCC)
- Credit for other dependents (ODC)

ITINs expire if not used – must renew unless solely for information returns

7

ITIN FOR SPOUSE AND DEPENDENTS P. 528

ITIN not eligible for certain tax credits

- Earned income credit (EIC)
- Child tax credit (2018 – 2025)
- Additional child tax credit (2018 – 2025)

8

ISSUE 2: FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT P. 529

General requirements :

Requires withholding on a transfer of US real property by a non-US person.

Tax is withheld from the gross purchase price.

Transferee is the withholding agent and must withhold and remit.

9

DEFINITIONS P. 529

Transfer = disposition for consideration (not gift)
Severance of crops or timber and extraction of minerals may not constitute a disposition.
Foreign person = nonresident alien, foreign corp, ptrshp, trust, or estate.
Does not include resident alien individual.

10

DEFINITIONS P. 530

Transferor = person that disposes of US real property
Transferee = person that acquires US real property
Amount realized = cash, property, liability assumed
US real property = land, improvements, some associated personal property

11

DEFINITIONS P. 531

Associated Personal Property

- Used to extract or sever natural products
Used to cultivate and harvest products
- Equipment to carry out improvements
- Used in the operation of a lodging facility
- Used in rental of furnished office or work spaces

12

POLLING QUESTION #1

The man in the moon is a nonresident alien.

True **False**

13

RATE OF WITHHOLDING P. 531

Generally, 15% of gross sales price
10% 1M or less and meets the personal residence test
Different requirements for entity distributions/disposition

14

ENTITY WITHHOLDING REQUIREMENTS P. 531

Corporation distributions:
21% of gain recognized on the distributions to S/H
Domestic Corp distributes to foreign S/H

- 15% of amount realized by foreign S/H
- Redemption of stock or liquidation of the corp

15

ENTITY WITHHOLDING REQUIREMENTS P. 531

Partnership Distributions:

- Withhold the highest rate of tax on gain allocable

Trust & Estate Distributions:

- 21% of gain allocable to foreign beneficiary
- 15% of amount realized in transfer of beneficial interest

16

REPORTING P. 532

Form 8288 and Form 8288-A

- Remit Form 8288-A copies A & B for each person tax was withheld
- Remit w/in 20 days of closing
- Remit w/in 20 days of withholding certificate or denial
- IRS file stamps 8288-A copy B and returns to seller
- Seller files the file stamped copy with the income tax return

17

REPORTING P. 533

- **Example 14.1** Corbin and Shauna (Canadians) sell their vacation home
- \$1,050,000 sale price
- Withholding = \$157,500
- Attach file-stamped Copy B to tax return
- Withheld funds credited towards tax liability
- Excess amounts refunded

18

WITHHOLDING EXCEPTIONS P. 535

Three exceptions to withholding requirements

1. Personal residence test
 - \$300,000 or less and use as a personal residence at least 50% of total time used (don't count days vacant)
 - Must reside at the property 24 months
 - Doesn't apply if the buyer is not an individual
 - Doesn't apply if selling land

19

WITHHOLDING EXCEPTIONS P. 536

2. Certification of Nonforeign Status
3. Nonrecognition Provision
 - Transferor must provide written notice with IRS code or US tax treaty. (Sec 1031)
 - Note – still reporting requirements

20

WITHHOLDING CERTIFICATE PP. 536-537

Form 8288-B with supporting documentation

On or before closing, apply for a withholding certificate to reduce withholding

Most common - tax liability is less than the flat 10 or 15%

Funds withheld but not remitted to IRS until certificate received (or denied)

Note – IRS is supposed to process w/in 90 days but is taking much longer

21

ISSUE 3: GIFTS OR BEQUESTS FROM FOREIGN PERSON P. 538

Foreign trusts used in abusive tax schemes

- Enacted to limit evasion
- File Form 3520, Form 3520-A by the US person
- Receipt of funds from a foreign trust
- Receipt of a foreign gift or bequest – above threshold
- Grantor (owner) of a foreign trust (Form 3520-A)

22

ISSUE 3: GIFTS OR BEQUESTS FROM FOREIGN PERSON P. 538

Proposed regulations provide guidance regarding:

- Information reporting
- Loans from, and uses of, funds from foreign trusts
- Amend requirements
- For any tax year ending after May 8, 2024.

23

FOREIGN GIFT OR BEQUEST P. 538

US persons must report large foreign gifts and bequests

Money or other property from a foreign person or decedent that is excluded from gross income.

Purported loan that is really a gift

Doesn't include payment of tuition/medical

Foreign person is nonresident alien or foreign entity (corp., partnership, estate)

24

POLLING QUESTION #2

Receiving a large gift from a foreign trust is an abusive tax scheme.

True **False**

25

FOREIGN GIFT OR BEQUEST PP. 538-539

Foreign trust distributions:

- Not gifts
- Must be reported as trust distribution

Practitioner Note – Exceptions
Recipient is a 501(c) and is exempt from tax

26

FOREIGN GIFTS AND BEQUESTS P. 539

Reporting threshold

- Over \$100K from nonresident alien or estate
- Over \$19,570 (2024) from foreign corp. or partnership
- Aggregation rules apply
- Exclusion amount is \$18,000 for 2024 per donee

27

FOREIGN GIFTS AND BEQUESTS PP. 539-540

Filing procedures - Report on Form 3520
Date, description, FMV
Aggregate >\$100,000, separately identify each transferor and gift >\$5,000
Report by 15th day of 4th month
Outside US and Puerto Rico, extended to 15th day of 6th month

28

FOREIGN GIFTS AND BEQUESTS P. 540

Penalties for failure to report

- 5% x amount of gift
- for each month
- Not to exceed 25%

29

FOREIGN TRUSTS – REPORTABLE EVENTS P. 540

Domestic trust treated as foreign trust

Reportable event

- Creation of foreign trust by US person
- Transfer of property to a foreign trust
- Death of decedent treated as owner of a foreign trust
- Transfer in exchange for obligation of foreign trust

30

FOREIGN TRUSTS - REPORTABLE EVENTS P. 541

Practitioner Note – Not a Reportable Event

- 3 Exceptions

Reporting on Form 3520

- Due dates same as for gifts

31

FOREIGN TRUSTS - US OWNER P. 541

US Owner must do the following:

1. File Form 3520 & 3520-A by the due date
2. Furnish a Foreign Grantor Trust Owner Statement
3. Furnish a Foreign Grantor Trust Beneficiary Statement

32

FOREIGN TRUSTS - DISTRIBUTIONS P. 542

Distributions

- US person must report any distributions from a foreign trust.
- Part III, Form 3520 by due date
- Transfer of property that exceeds FMV of property received
- Received directly or indirectly
- Actually or constructively received
- Includes gift or bequest

33

FOREIGN TRUSTS - PENALTIES P. 542

Penalties for failure to timely file or fails to provide complete/correct information

- Greater of \$10,000 or 35% of gross reportable amount
- For each failure

Amount < gross reportable amount, penalty is based on unreported amount

Additional penalties if > 90 days after IRS notice

34

ESTATE/GIFT TAX FOR NONRESIDENTS P. 543

Nonresident aliens taxed on US-situated property

Estate tax: real estate, tangible personal property, US corp. stock

- \$60,000 exclusion
- Note – treaty may vary
- Unlimited marital deduction may be available

35

ESTATE/GIFT TAX FOR NONRESIDENTS P. 543

Practitioner Note – Canadian Residents

Exemption is a fraction

FMV of all US assets

Basic exemption x FMV of all worldwide assets

36

ESTATE/GIFT TAX FOR NONRESIDENTS P. 543

Gift tax on real or tangible personal property and cash
\$18,000 (2024) annual exclusion
Cannot split gifts with spouse
\$185,000 (2024) annual exclusion for gifts to noncitizen spouse

37

POLLING QUESTION #3

The annual gift tax exclusion is \$18,000 for 2024.

True False

38

ISSUE 4: FBAR PP. 544-545

US persons report foreign financial interest or signing authority of at least one account outside US

Aggregate value exceeded \$10K, at any time during the calendar year

Account does not have to produce income

List of 7 exceptions on page 544

39

ISSUE 4: FBAR P. 544

Financial Account:

- Securities, brokerage, savings, checking, etc.
- Commodity futures or options account, cash value insurance policy
- Not lines of credit, credit cards
- Not individual bonds, notes, or stock certificates

40

ISSUE 4: FBAR P. 545

Foreign Financial Account

- Financial institution located outside the US
- US bank located outside US is foreign

41

FBAR – FINANCIAL INTEREST P. 545

Owner of record

Owner is agent or nominee

Owner is corp. and US person owns 50% or more shares/voting

Owner is partnership and US person owns 50% or more interest/voting

42

FBAR – FINANCIAL INTEREST P. 545

Trust

- Grantor trust
- 50% or more beneficial interest in assets or income
- Other entity, 50% or more voting/interest

Practitioner Note – Attribution rules do not apply toFBAR

43

FBAR – SIGNING AUTHORITY P. 545-546

Authority to control dispositions in foreign financial accounts

Signature authority – includes power of attorney

Ex. 14.2 Megan has POA for mom in Canada – never exercised – still must report

Ex. 14.3 Audrey is treasurer for foreign nonprofit, signing authority, must report

44

FBAR – FILING P. 546

File by 4/15 – automatic extension to Oct 15th

FinCEN's BSA E-filing system

Taxpayers must answer FBAR-related questions on federal tax returns

Note – authorize practitioner w/Form 2848

45

FBAR – PENALTIES P. 546

Penalties for willful/nonwillful violations

- Nonwillful – maximum \$10,000
- Willful – greater of 50% x max account balance or \$100,000

May be reasonable cause relief from nonwillful violation

46

FORM 1040-NR P. 547

Nonresident aliens report US income:

- Nonresident alien in trade or business even if no income
- US source income is wages with no or insufficient withholding
- Representative, agent, or fiduciary
- Temporary Visas – only if income is subject to tax

Claim a refund of excess withheld

47

ISSUE 5: FORM 1040-NR PP. 547-548

Income divided into two categories:

1. Effectively connected with a trade or business (ECI)
 - Graduated rates
2. Fixed, determinable, annual, or periodic (FDAP)
 - Generally passive investment income
 - Flat rate 30% or lower treaty rate

Note – real property sale treated as ECI – report on Schedule D

48

POLLING QUESTION #4

Nonresident aliens do not have to report US Income.

True **False**

49

FORM 1040-NR – WHEN TO FILE P. 548

April 15 – employee or self-employed
June 15 – all others
Form 4868 to request automatic extension
Failure to file and/or failure to pay penalties

Note – filed after 16 months of due date, IRS can deny deductions and credits

50

FORM 1040-NR VS. FORM 1040 PP. 548-549

Filing status – no MFJ, no HoH
Married filing single
◦ Must meet 5 tests
Qualifying surviving spouse
◦ Must meet 2 additional tests

51

FORM 1040-NR VS. FORM 1040 P. 549

- No standard deduction
- Limited itemized deductions
- Credits available to US nationals, Canada, & Mexico
 - CTC, credit for other dependents, additional child tax credit, and PTC

52

NOTE – SCHEDULE OI P. 550

- Generally, all Forms 1040-NR must include Schedule OI
- Other schedules may be required
- Trusts and estates use Form 1040-NR

53

Questions?

54
