2024
NATIONAL INCOME TAX
WORKBOOK
CHAPTER 14: INTERNATIONAL TAX
ISSUES

Land Grant University
Tax Education Foundation

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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

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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

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 		

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ISSUE 1: INDIVIDUAL TAXPAYER IDENTIFICATION # P. 527

Documentation of Foreign Status

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

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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

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

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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)

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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.

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.

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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

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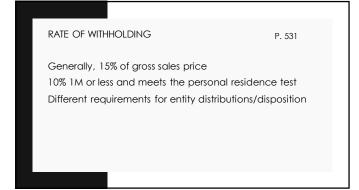
DEFINITIONS

P. 531

Associated Personal Property

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

POLLING QUESTION #1		
The man in the moon is a nonresident alien.		
True	False	



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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

ENTITY WITHHOLDING REQUIREMENTS

P. 531

Partnership Distributions:

 \circ Withhold the highest rate of tax on gain allocable

Trust & Estate Distributions:

- $\,{}^{_{\,\circ}}\,21\%$ of gain allocable to foreign beneficiary
- 15% of amount realized in transfer of beneficial interest

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REPORTING

P. 532

Form 8288 and Form 8288-A

- \circ 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
- $_{\circ}$ IRS file stamps 8288-A copy B and returns to seller
- Seller files the file stamped copy with the income tax return

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REPORTING

P. 533

- $\circ \textbf{Example 14.1}$ 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

WITHHOLDING EXCEPTIONS

P. 535

Three exceptions to withholding requirements

- 1. Personal residence test
- $_{\circ}\,\$300,\!000$ 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
- ${\scriptstyle \circ\,} \mbox{Doesn't}$ apply if the buyer is not an individual
- Doesn't apply if selling land

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WITHHOLDING EXCEPTIONS

P. 536

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

Note – still reporting requirements

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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 $\,$

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)

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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.

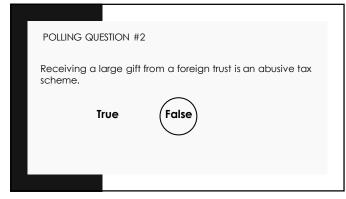
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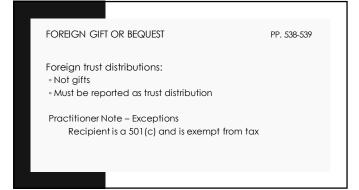
FOREIGN GIFT OR BEQUEST

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)





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FOREIGN GIFTS AND BEQUESTS

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

FOREIGN GIFTS AND BEQUESTS

PP. 539-540

Filling 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

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Penalties for failure to report

5% x amount of gift

for each month

Not to exceed 25%

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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

FOREIGN TRUSTS - REPORTABLE EVENTS

Practitioner Note – Not a Reportable Event

3 Exceptions

Reporting on Form 3520

Due dates same as for gifts

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FOREIGN TRUSTS - US OWNER

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

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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

FOREIGN TRUSTS - PENALTIES

P. 542

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

- $_{\circ}$ 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

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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

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ESTATE/GIFT TAX FOR NONRESIDENTS

P. 543

Practitioner Note – Canadian Residents Exemption is a fraction

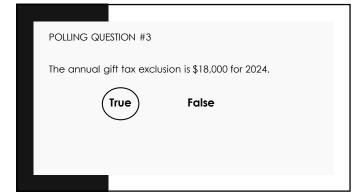
FMV of all US assets

Basic exemption x FMV of all worldwide assets

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

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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

ISSUE 4: FBAR

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

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ISSUE 4: FBAR

P. 545

Foreign Financial Account

Financial institution located outside the US

US bank located outside US is foreign

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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

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

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FBAR – SIGNING AUTHORITY

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

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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

FBAR – PENALTIES

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

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FORM 1040-NR

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

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ISSUE 5: FORM 1040-NR

Income divided into two categories:

1. Effectively connected with a trade or business (ECI)

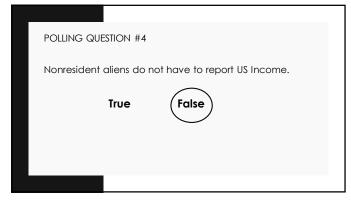
Graduated rates

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



FORM 1040-NR – WHEN TO FILE

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

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FORM 1040-NR VS. FORM 1040

PP. 548-549

Filing status – no MFJ, no HoH

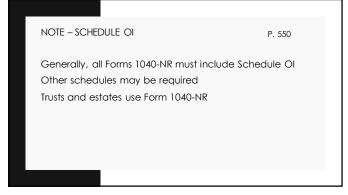
Married filing single

Must meet 5 tests

Qualifying surviving spouse

Must meet 2 additional tests

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		



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