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*FOREIGN GIFTS*

## Windfall From Abroad Brings Home IRS Compliance Issues

*Gifts and inheritances from abroad, as well as foreign lottery winnings, raise a variety of lesser-known tax return filing rules.*

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In the movie *Castaway*, Chuck Noland, the character played by Tom Hanks, is left stranded on an uninhabited island for many years. As the sole survivor of a plane crash in the Pacific Ocean, Hank's character arrives unconscious on the island. In some respects, the cast of *Gilligan's Island* had more resources available to them during their three seasons on an unchartered island. Heck, even the Harlem Globetrotters found themselves on Gilligan's Island in a later made-for-television movie, and were able to get off the island, while Gilligan's group remained hopelessly behind.

What is the relevance of *Castaway* and *Gilligan's Island*? Well, in both of those shows and countless others that have had a similar premise, when the characters eventually finds their way back to civilization, they are left in awe of how much has changed during their time away. Sadly, those who may have found themselves stuck on either Gilligan's or Noland's Island for the past seven years will have no problem becoming familiarized with at least one aspect of life in 2016, the U.S.'s crackdown on taxpayers with foreign assets. The crackdown commenced with the public investigation into UBS AG in 2008, has featured four iterations of a voluntary disclosure program, multiple streamline programs, and countless indicted taxpayers, financial advisors, and bankers.

U.S. taxpayers also must file numerous information returns to report ownership or a connection to foreign assets. For many, including those arriving in the U.S. on immigration visas, or even those citizens and permanent residents residing abroad, it must feel like there are new forms required annually. In truth, they are partly correct. Forms 8938, 8621, and 708 are new in the past few years or in the case of Form 8621 have expanded filing requirements.

As a result of the punitive nature of the penalties associated with failing to file information returns with the IRS, the focus of this article is on the filing obligations and consequences for U.S. taxpayers who receive a gift or bequest (collectively, a "gift") from foreign individuals. The article will discuss the tax consequences, compliance obligations, and penalties associated with receiving such a gift. After all, taxpayers never know when the email informing them that they inherited a fortune from a long lost relative in Timbuktu will be valid.

## Tax

Both the donor and donee of the gift can have tax obligations.

**Donor obligations.** If the donor of a gift is a U.S. citizen or permanent resident, such donor is entitled to the unified credit in [Sections 2010](#) and [2505](#), which can be used to offset the estate tax in [Section 2001](#) on the value of the gift or the gift tax in [Section 2501](#) on the value of the gift. The extent to which the unified credit is unavailable or the value of the gift exceeds the credit, the donor is required to pay the resulting estate or gift tax.

The donor must file a Form 709, whereas, the donor's estate must file a Form 706, when the gift comes from a donor's estate. In general, the IRS must assess any gift tax within three years after Form 709 is filed or estate tax within three years of the Form 706 being filed. [1](#) A failure to file Form 706 or 709 prevents the statute of limitation from starting.

Furthermore, if a gift tax return is filed, but a gift is either omitted from the return or not adequately described, the statute does not commence, and the IRS can assess the gift tax at any time. [2](#) Thus, a gift that is disclosed on the Form 709 or in a statement attached to the return should be identified in a matter that is "adequate to apprise the [IRS] of the nature" of the gift, so that the statute will begin to run. Unlike with gift tax returns, there is no method by which the examination of an estate tax return can be extended.

One need look no further than the recent case of *Redstone*. [3](#) In this case, the IRS successfully argued that a 1972 transfer of stock to Sumner Redstone's children was a taxable gift. Because no gift tax return was filed, the statute remained open for the IRS to assess the gift tax deficiency more than 40 years after the transfer.

Additionally, in March 2015, IRS Field Attorney Advice (FAA) 20152201F was released. It is noteworthy for citing the standard the IRS will use when determining if a gift is adequately disclosed. The FAA cites

**Reg. 301.6501(c)-1(f)(2)** , which sets forth the minimum standard for disclosure to start the running of the gift tax statute of limitations. These items include:

- (1.) A description of the transferred property and any consideration the transferor received.
- (2.) The identity of, and relationship between, the transferor and each transferee.
- (3.) If the property is transferred in trust, the trust's tax identification number and a brief description of the terms of the trust. In lieu of a brief description of the trust terms, a copy of the trust instrument may be provided.
- (4.) A detailed description of the method used to determine the fair market value of property transferred. This includes any financial data (e.g., balance sheets with explanations of any adjustments) used in determining the value of the interest; any restrictions on the transferred property that were considered in determining the fair market value of the property; and a description of any discounts, such as discounts for blockage, minority or fractional interests, and lack of marketability, claimed in valuing the property. With respect to the transfer of an interest in an entity (e.g., a corporation or partnership) that is not actively traded, a description must be provided of any discount claimed in valuing the interests in the entity or any assets owned by that entity. In addition, if the value of the entity or of the interests in the entity is properly determined based on the net value of the assets held by the entity, a statement must be provided regarding the fair market value of 100% of the entity (determined without regard to any discounts in valuing the entity or any assets owned by the entity), the pro rata portion of the entity subject to the transfer, and the fair market value of the transferred interest as reported on the return. If 100% of the value of the entity is not disclosed, the taxpayer bears the burden of demonstrating that the fair market value of the entity is properly determined by a method other than a method based on the net value of the assets held by the entity.
- (5.) A statement describing any position taken that is contrary to any proposed, temporary, or final regulations or revenue rulings published at the time of the transfer.

**Donee obligations.** In general terms, the donee is subject to tax on the receipt of a gift, only if the donor fails to file a Form 709 allocating exemption or pay the required tax, **4** or the donor's estate fails to file a Form 706 allocating exemption or paying the required tax. **5** This, of course, assumes that the value of the gift exceeds the annual exclusion. On the other hand, if the donor is a foreign person, and the gift received does not have a U.S. situs, there is no tax associated with the receipt of the gift. To the extent the donor is a "covered expatriate," as the term is defined in **Section 877A(g)** , however, the donee is required to pay gift tax on the value of the gift, and the situs of the gift is irrelevant. **6** The taxation and reporting of gifts from covered expatriates is discussed below.

## Compliance

There are countless information returns that are required when a taxpayer owns foreign assets. When a taxpayer receives a gift, depending on the gift's type and value, the taxpayer may have to file one or

more information returns.

**Gifts from covered expatriates.** When a taxpayer receives a gift from a covered expatriate, a tax is due. Form 708, "U.S. Return of Tax for Gifts and Bequests from Covered Expatriates," is required to report the receipt of the gift. The Form 708 is also used to assist the taxpayer in calculating the value of the gift subject to the **Section 2801** tax. The form does not yet exist, however, so the obligations to file and pay the tax are deferred until final regulations for **Section 2801** are issued.

Generally, to determine the **Section 2801** tax, the taxpayer reduces the total gifts received by the total annual exclusion gifts eligible and then multiplying that net amount by the highest estate or gift tax rate in effect during that tax year. The resulting tax is then reduced by any estate or gift tax paid to a foreign country with regard to those transfers. **7** Additionally, if the gift received from the covered expatriate qualifies for the marital deduction, including amounts paid to a QTIP or QDOT provided the elections are timely made, there is no requirement to file Form 708 or pay the corresponding tax. Only those taxpayers who are deemed to have a U.S. residence for transfer tax purposes (i.e., U.S. domicile), however, are subject to **Section 2801**. **8** As such, **Section 2801** does not apply to individuals who are U.S. income tax residents, but who do not have a U.S. domicile, even if such persons receive gifts from covered expatriates.

If a taxpayer fails to file Form 708 or pay the **Section 2801** tax, the delinquency penalties in **Section 6651** apply. However, the **Section 6662** accuracy-related penalties apply to understatements of the **Section 2801** tax attributable to a substantial valuation (in accordance with **Section 6662(g)**) or gross valuation (in accordance with **Section 6662(h)**). In such circumstance, the accuracy-related penalty is increased to 40% of the understatement.

**Gifts from foreign persons, estates, corporations, and trusts.** Form 3520, "Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts," has four parts. Parts III or IV are completed if a taxpayer receives a gift from a foreign trust (Part III), person, estate, or corporation (Part IV). Of course, if the gift from a foreign person or foreign estate is related to a covered expatriate, the Form 708 must also be completed.

*Gifts from foreign persons.* Line 54 on Part IV of the Form 3520 pertains to gifts from foreign persons. If during a calendar year, the taxpayer receives gifts from one or more foreign persons that exceed \$100,000 in total, the taxpayer must file Form 3520 to report the receipt of those gifts. **9** For this purpose, gifts include amounts received by a foreign person or foreign estate. To the extent the taxpayer has a filing obligation, all gifts exceeding \$5,000 are required to be itemized on the form. The \$100,000 threshold is a constant and does not adjust for inflation. The filing obligation is mandated by **Section 6039F**.

*Gifts from foreign corporations or partnerships.* Line 55 on Part IV of the Form 3520 pertains to amounts received from a foreign corporation or partnership ("foreign entity"). If a U.S. taxpayer receives a distribution from a foreign entity in which the taxpayer is not a shareholder or partner, and the distribution

exceeded \$15,671 in 2016, then it must be reported on Form 3520. It is important to note that the reporting threshold changes annually.

*Gifts from foreign trusts.* If a taxpayer receives a distribution from a foreign trust, regardless of the distribution amount, Part III of the Form 3520 must be completed. **10** If a distribution follows the death of a foreign person, the distribution is reported in only Part III, and not Part IV, as it is coming from a foreign trust, and not a foreign estate. The reporting obligation is mandated by **Section 6048** .

The Form 3520 is due at the same time as the U.S. person's income tax return is due, including extensions. An extension to file a U.S. person's income tax return is deemed to also extend the due date on the Form 3520. Notwithstanding, the Form 3520 is not attached to the income tax return. Rather, it is filed with the Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409. While the instructions do not indicate that the Form 3520 must be filed even if there is no income tax filing obligation, good practice would seem to indicate that a taxpayer otherwise required to file should do so because the form is not attached to the income tax return.

The penalty for not filing a Form 3520 or filing an incomplete form varies depending on the reason the form was required. For example, if the failure to file Form 3520 pertains to the necessity to report a gift from a foreign trust, **Section 6677** indicates that the penalty is the greater of \$10,000 or 35% of the amount of the gift. However, if Part IV of the Form 3520 is not filed to report a gift from a foreign person, estate, or corporation, **Section 6039F** indicates that the penalty is equal to 5% of the amount of the gifts for each month for which the failure to report continues (not to exceed a total of 25%). The penalty may be waived if the taxpayer can demonstrate the failure to file was due to reasonable cause, and not willful neglect.

In the "Donee obligations" portion of the above "Tax" section of the article, circumstances in which a donee could be responsible for tax were discussed. However, there is at least one more instance in which a donee could be liable for tax. When the gift consists of a distribution from a foreign trust, a critical issue for the donee is to determine whether the trust is a grantor or nongrantor trust. If the distribution is from a nongrantor trust, the distribution could not only be taxable, but also subject to a punitive tax regime referred to as the throwback rules of **Sections 665** through **668** . **11** In short, under these rules, accumulated income is allocated to a beneficiary's current and prior tax years in a manner that produces the income tax liability that would have been payable had the income been distributed in the year earned, plus interest.

**Gift of a foreign bank account.** If a taxpayer inherits a foreign bank or financial account from a foreign person, and the value of the foreign account exceeded \$10,000 at any point during the year, the taxpayer must file FinCen Form 114, "Report of Foreign Bank and Financial Accounts" (the "FBAR"). The form is electronically filed.

Historically, the FBAR had to be filed no later than June 30, and extensions were not permitted. However, The Federal Highway Bill, which was signed into law on 7/31/2015, changes the due date of the FBAR to coincide with the due date for individual returns. Not only does the Highway Bill change the

FBAR filing deadline from June 30 to April 15, but it permits taxpayers to request a six-month FBAR filing extension to match the extension available for individual returns. This change is effective for tax years beginning after 2015. Therefore, the 2016 FBAR, which reports foreign accounts held in 2016, will be the first to be due on 4/15/2017. As such, the 2015 FBAR is still due on 6/30/2016 and is not eligible to be extended.

Failing to file an FBAR can carry a civil penalty of \$10,000 for each non-willful violation. But if a violation is found to be willful, the penalty is the greater of \$100,000 or 50% of the amount in the account for each violation, and each year of failure to file is a separate violation. However, on 5/13/2015, the IRS released internal guidance to employees of LB&I, SB/SE, and TE/GE on the FBAR titled, Interim Guidance for Report of Foreign Bank and Financial Accounts (FBAR) Penalties. **12** The guidance is designed to help seek consistency in the administration of FBAR enforcement.

**Foreign corporations.** The receipt of a gift of shares in a corporation can have filing implications.

*Gift of shares in a foreign corporation.* If a taxpayer receives a gift of stock in a foreign corporation, and thus becomes a shareholder, a Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," is likely required. Interestingly, the value of the stock is irrelevant for purposes of determining whether a filing obligation exists. Certain U.S. citizens and residents who are officers or directors of certain foreign corporations are required to file Form 5471. See the Form 5471 instructions for a complete list of filing requirements.

The Form 5471 is due at the same time as the U.S. person's income tax return is due, including extensions. An extension to file a U.S. person's income tax return is deemed to also extend the due date on the Form 5471. The Form 5471 is attached to the U.S. person's income tax return.

**Section 6038** imposes a penalty of \$10,000 for failing to file a Form 5471 and it increases by \$10,000 for each 30-day period following notification from Treasury, with the maximum penalty being \$50,000. There is, however, a 90-day grace period following notification from Treasury before the additional \$10,000 penalties accrue. The penalty may be waived if the taxpayer is able to demonstrate the failure to file was due to reasonable cause. Additionally, if the taxpayer was anticipating receiving a foreign tax credit under **Sections 901**, 902, or 960, **Section 6038(c)** reduces the credit by 10% when the Form 5471 is not filed. If the failure continues 90 days or more after the date the IRS mails notice of the failure to the U.S. person, an additional 5% reduction is made for each three-month period, or fraction thereof, during which the failure continues after the 90-day period has expired.

The penalty may also be applied when a Form 5471 is *substantially* incomplete. However, neither the Code, regulations, or Form 5471 instructions define "substantial compliance." Notwithstanding, last year the IRS released an International Practice Unit (IPU) providing guidance to its agents as to when penalties could be assessed for filing an incomplete Form 5471. **13** While not a complete summary of the IPU, it does indicate that if any of the following errors are contained on page 1 of the Form 5471, it will be deemed to be incomplete:

- Item B: Omitting or providing the incorrect "Category of the Filer."
- Item C: Omitting or providing the incorrect total percentage of the foreign corporation's voting stock owned at the end of its accounting period.
- Item 1a: Omitting the name or address of the foreign corporation.
- Items 1b: Omitting the Reference ID number for the foreign corporation.
- Failing to attach or complete the required Schedules to Form 5471.

*Gift of shares in a foreign corporation doing business in the U.S. or a domestic corporation owned at least 25% by foreign persons.* If a taxpayer receives a gift of shares in either a U.S. corporation or a foreign corporation which owns a U.S. corporation, depending on the identity of the other shareholders, the taxpayer could have a Form 5472 filing obligation. If the taxpayer has control of the foreign corporation, files a Form 5471, and files a Schedule M reporting all of the reportable transactions between the reporting corporation and the related party, then there is no need to file the Form 5472.

The Form 5472 is filed as an attachment to the corporation's income tax return. As such, the Form 5472 is due at the same time as the corporation's income tax return, including extensions. The failure to file Form 5472 is punishable by a penalty of \$10,000.

**Gift of shares in a passive foreign investment company (PFIC).** If a taxpayer inherits an interest in a PFIC or qualified electing fund (QEF), such interest may need to be reported on Form 8621. The most common PFIC is a foreign mutual fund, but foreign holding companies also may qualify as a PFIC. See the Form 8621 instructions for a complete list of filing requirements. However, some of the more common reasons why taxpayers are required to file the form include the following instances:

- (1.) Upon the receipt of certain direct or indirect distributions from a PFIC.
- (2.) To report gain on a direct or indirect disposition of PFIC stock.
- (3.) To make a QEF or **Section 1296** mark-to-market election.

The Form 8621 is due at the same time as the U.S. person's income tax return is due, including extensions. An extension to file a U.S. person's income tax return is deemed to also extend the due date on the Form 8621. The Form 8621 is attached to the U.S. person's income tax return. Interestingly, the instructions to Form 8621 specifically state that the form must be filed by a taxpayer, when due, even if such taxpayer does not have an obligation to file an income tax return.

Neither the Form 8621 instructions; **Section 1298(f)**, which provides the filing obligation; nor the regulations impose a penalty for the failure to file Form 8621. However, the regulations tie the filing requirement to the Form 8938. As such, the minimum penalty for failing to file a Form 8621 is \$10,000 under **Section 6038D(d)** and **Reg. 1.6038D-4(a)(10)**. The penalty increases by \$10,000 for each 30-day period following notification from Treasury, with the maximum penalty being \$50,000. There is, however, a 90-day grace period following notification from Treasury before the additional \$10,000 penalties accrue. The penalty may be waived if the taxpayer is able to demonstrate the failure to file was due to reasonable cause.

**Gift of a foreign partnership interest.** Four categories of filers may be required to file Form 8865, "Return of U.S. Persons With Respect to Certain Foreign Partnerships." If a taxpayer inherits an interest in a foreign partnership, such taxpayer may qualify as a category 1 or category 2 filer. A category 1 filer is an individual who owns more than 50% of a foreign partnership at any point during the tax year. A category 2 filer is an individual who owned at least 10% of the foreign partnership during a time that the partnership was controlled by U.S. persons each owning at least 10%. See the Form 8865 instructions for a complete list of filing requirements.

The Form 8865 is due at the same time as the U.S. person's income tax return (or partnership return, if applicable) is due, including extensions. An extension to file a U.S. person's income tax return is deemed to also extend the due date on the Form 8865. The Form 8865 is attached to the U.S. person's income tax return. Similar to the Form 8621, the instructions specifically state that the form must be filed by a taxpayer, when due, even if such taxpayer does not have an obligation to file an income tax return.

**Gift of specified foreign financial assets (SFFA).** Certain taxpayers qualifying as "specified individuals" who own one or more SFFA are required to file Form 8938, "Statement of Specified Foreign Financial Assets," if the value of all such foreign assets exceeds the reporting threshold.

A taxpayer is a specified individual if he or she is any of the following:

- (1.) U.S. citizen.
- (2.) Permanent resident.
- (3.) Qualifies as a resident alien under the substantial presence test.
- (4.) Nonresident alien who made an election to file a joint return with a U.S. spouse.
- (5.) Bona fide resident of a U.S. possession, territory, commonwealth, etc.

While a complete list of SFFA is beyond the scope of this article, taxpayers with an interest in a foreign estate need to be aware that such interest qualifies as an SFFA. Notwithstanding, if the taxpayer does not know or have reason to know about the interest in the foreign estate, it will not qualify as a reportable asset. The instructions indicate that the taxpayer is deemed to have knowledge of the interest upon receipt of a distribution from the estate. As such, taxpayers who inherit assets from a foreign decedent could have a Form 3520 filing in addition to a Form 8938. See the Form 8938 instructions for a complete list of definitions, filing thresholds and rules on valuing assets.

The instructions clearly indicate that if a specified individual does not have a requirement to file a Form 1040 or 1040-NR, even if there is otherwise a requirement to file Form 8938, the Form 8938 requirement is eliminated. Taxpayers would be wise not to confuse this exception with filing a claim for treaty benefits. Claiming the benefits of an income tax treaty, even if it otherwise states that the taxpayer is not a U.S. person, does not eliminate or excuse the failure to file Form 8938.

In an effort to eliminate duplicate filing obligations, the extent to which a taxpayer reports an asset on a Form 3520, 5471, 8621, or 8865, it does not also have to be reported on Form 8938. Instead, the

taxpayer would reflect on Form 8938, which information form was filed reporting the asset. Note that the elimination of duplication does not apply to the FBAR filing obligation. As such, financial accounts and assets reported on an FBAR, if otherwise classified as SFFAs, may still be required to be reported on Form 8938.

The Form 8938 is due at the same time as the U.S. person's income tax return is due, including extensions. An extension to file a U.S. person's income tax return is deemed to also extend the due date on the Form 8938. The Form 8938 is attached to the U.S. person's income tax return.

The minimum penalty for failing to submit the required disclosure is \$10,000, and it increases by \$10,000 for each 30-day period following notification from Treasury, with the maximum penalty being \$50,000. There is, however, a 90-day grace period following notification from Treasury before the additional \$10,000 penalties accrue. The penalty may be waived if the taxpayer is able to demonstrate the failure to file was due to reasonable cause.

## Additional considerations

Taxpayers who are receiving assets from abroad should also consider the points discussed below.

**Proper classification.** If the taxpayer receives a gift that consists of an interest in a foreign entity, it is critically important to properly classify the entity for U.S. tax purposes and the corresponding compliance. Form 8832 is a good place to start, as it provides a list of foreign entities that qualify as corporations. If the entity is not listed as a per se corporation, it could qualify as a business entity, trust, disregarded entity, or partnership to name but a few options. The taxpayer can also file a Form 8832 to change the entity's classification, which may have profound benefits for U.S. tax. However, the classification can change for only an entity that is not a per se corporation.

It is interesting to note that the IRS is often not certain how to classify a foreign entity either. For example, in a Chief Counsel Memorandum, the IRS attempted to classify the treatment of a Liechtenstein Anstalt and Stiftung. <sup>14</sup> The IRS concluded that while the facts and circumstances of each particular case will control, it is likely an Anstalt qualifies as a business entity, and a Stiftung as a trust. Additionally, in 2013, the IRS finally determined that a Mexican Fideicomiso did not qualify as a trust for which Form 3520 or 3520-A was required. <sup>15</sup>

**Statute of limitations.** The limitations period depends on certain factors.

- *Income omission.* If a taxpayer omits more than \$5,000 of income attributable to one or more assets required to be reported on Form 8938, the IRS will have six years from the date the Form 8938 is filed to audit the taxpayer. <sup>16</sup>
- *Failure to file.* If one or more of the following information returns is required to be filed, and is not, the statute of limitations is tolled until the forms are filed: Form 926, 3520, 3520-A, 5471, 8621, 8865, or 8938. <sup>17</sup> The statute is tolled not only for the income associated with the

information return, if any, but it also keeps the statute open on the underlying tax return. As such, even if there is no omission of income attributable to the asset reported on the information return, the three-year statute of limitations is tolled until the information return is filed. It is important to understand that **Section 6501(c)(8)** is not limited to income tax returns. The IRS made clear in an Office of Chief Counsel Memorandum **18** that it can also apply to the Form 1041 and Form 706 when a required form is not filed.

- *Penalties.* While taxpayers are subject to penalty for failure to file each of these above forms, reasonable cause is available as a defense. Of course, what constitutes reasonable cause is subject to debate with the IRS.

If the taxpayer underpays tax as a result of an undisclosed SFFA required to be reported on Form 926, 3520, 3520-A, 5471, 8865, or 8938, the deficiency will be subjected to a 40% penalty. **19** This contrasts with the normal 20% penalty on the understatement imposed by the accuracy-related penalty in **Section 6662(a)**. If the taxpayer underpays tax as a result of fraud, the deficiency will be subject to a 75% penalty. Of course, criminal penalties may also be imposed for failure to file a form, report an asset, or underpay tax.

- *Passport.* On 12/4/2015, President Obama signed legislation that was passed by Congress on 12/3/2015, which authorizes the State Department to revoke or deny the passport of a U.S. taxpayer who owes more than \$50,000 of tax. The provision is contained in the Fixing America's Surface Transportation Act (FAST Act), and indicates that the deficiency has to be "seriously delinquent," which means that the taxpayer has exhausted all administrative rights under **Section 6320**. **20** If the taxpayer filed for a Collection Due Process Hearing under **Section 6330** or is paying the debt under an installment agreement, the State Department is prohibited from taking action on the passport.

## Conclusion

"Do not look a gift horse in the mouth" is a common refrain that simply means do not be ungrateful when receiving a gift. **21** Gratitude for a gift is a separate matter completely. Notwithstanding, taxpayers who receive a gift would be well advised to seek counsel from a qualified tax return preparer or attorney with an international practice. Failure to file the appropriate forms not only subjects taxpayers to significant penalty. It also affects the statute of limitation on the underlying income tax returns. Simply stated, if the form is not filed or is incomplete, the statute of limitation on the income tax return remains open.

**1** Section. 6501(a).

**2** **Section 6501(c)(9)** .

**3** TCM 2015-237.

**4 Section 6324(b)** .

**5 Section 6324(a)** .

**6 Section 2801** .

**7** See Reg. 28.2801-4(e).

**8** Reg. 28.2801-2.

**9 Section 6039F(a)** .

**10 Section 6048(c)** .

**11** See Meltzer, Schwartz, and Weissbart, "International Estate Planning for the Domestic Lawyer," **43 ETPL 13 (April 2016)** .

**12** [www.irs.gov/pub/foia/ig/spder/SBSE-04-0515-0025\[1\].pdf](http://www.irs.gov/pub/foia/ig/spder/SBSE-04-0515-0025[1].pdf) (last visited on 1/25/2016).

**13** IRS LB&I International Practice Service Process Unit-Audit, "Failure to File the Form 5471-Category 4 and 5 Filers-Monetary Penalty," FEN/9433.01\_06(2013)(c) (last updated 10/7/2015); available at [www.irs.gov/pub/irs-utl/FEN9433\\_01\\_06R.pdf](http://www.irs.gov/pub/irs-utl/FEN9433_01_06R.pdf) (last visited on 1/25/2016).

**14** AM 2009-012, 10/7/2009, available at [www.irs.gov/pub/irs-utl/am2009012.pdf](http://www.irs.gov/pub/irs-utl/am2009012.pdf) (last visited on 1/25/2016).

**15 Rev. Rul. 2013-14, 2013-26 IRB 1267** .

**16** Section 6501(e)(1)(A)(1).

**17 Section 6501(c)(8)** .

**18** POSTN-120589-14, 10/3/2014, available at [www.irs.gov/pub/irs-utl/PMTA-2014-018.pdf](http://www.irs.gov/pub/irs-utl/PMTA-2014-018.pdf) (last visited on 1/25/2016).

**19 Section 6662(j)** .

**20** Section 32101 of the Fast Act.

**21** The Phrase Finder, [www.phrases.org.uk/meanings/dont-look-a-gift-horse-in-the-mouth.html](http://www.phrases.org.uk/meanings/dont-look-a-gift-horse-in-the-mouth.html) (last visited on 1/25/2016).