

APRIL 15 DUE DATE FOR IRS FORM 3520 FOR NON-RESIDENTS

Canadian Tax Highlights
March 1, 2018

This article was originally published in the Canadian Tax Highlights Volume 26, Number 3, March 2018. Reprinted with permission.

On December 4, 2015, President Obama signed into law the Surface Transportation Act of 2015, which included changes to the filing deadlines of several IRS forms. The deadline change for form 3520 (“Annual Return To Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts”) appears to have gone unnoticed until now, even by the IRS.

Form 3520 must be filed if in the year a us citizen or resident

- was a grantor of a non-us trust under us grantor trust rules,
- transferred certain property to a non-us trust,
- received a distribution or a loan from a non-us trust, or
- received a gift or bequest in excess of us\$100,000 from a non-us individual or estate.

The due date for form 3520 was the same as an individual’s us income tax return filing deadline: a Canadian resident had a filing deadline of June 15 and could request a filing extension until October 15. The new law provides an April 15 deadline for all form 3520 filers, including a us non-resident.

The April 15 due date was effective for the 2016 tax year. The IRS, however, did not update the instructions to the 2016 version of form 3520 to reflect the new April 15 due date. The IRS can impose a penalty of at least \$10,000 for failure to file form 3520 in a timely manner, but arguably not for 2016 because the IRS failed to properly update its instructions to the 2016 version of the form. Presumably, the IRS will not impose a penalty on such an individual for the 2016 year, in light of its own oversight.

The IRS has updated the instructions to the 2017 version of form 3520 to reflect the change of date in the law. As a result, Canadian residents now need to file form 3520 by April 15, or request an extension of time to file (until October 15) by that date; otherwise, the form is considered late and the IRS may impose a penalty.

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