

2024  
NATIONAL INCOME TAX  
WORKBOOK

CHAPTER 14: INTERNATIONAL TAX ISSUES



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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

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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:

- 3<sup>rd</sup> party reporting of mortgage interest
- gambling income
- withholding

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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.

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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
- Equipment to carry out improvements
- Used in the operation of a lodging facility
- Used in rental of furnished office or work spaces

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**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

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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

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**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

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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

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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

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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

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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

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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

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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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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.

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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)

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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

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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

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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 15<sup>th</sup> day of 4<sup>th</sup> month

Outside US and Puerto Rico, extended to 15<sup>th</sup> day of 6<sup>th</sup> month

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FOREIGN GIFTS AND BEQUESTS P. 540

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 and decedent treated as owner of a foreign trust
- Transfer in exchange for obligation of foreign trust

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FOREIGN TRUSTS - REPORTABLE EVENTS P. 541

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 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

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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

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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

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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  
Exclusion is a fraction  
$$\frac{\text{FMV of all US assets}}{\text{Basic exclusion} \times \text{FMV of all worldwide assets}}$$
  
(\$13,610,000)

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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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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

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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

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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

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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 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

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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

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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

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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

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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

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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

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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

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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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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

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Questions?

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