Forms 3520-A/3520 Relief for U.S Taxpayers Holding Canadian RESPs and RDSPs

HANSON Crossborder Tax Inc.

If you are a U.S. taxpayer and hold an RESP (Registered Education Savings Plan) or RDSP (Registered Disability Savings Plan), you may recall an IRS Large Business & International Division campaign from May of 2018 (just one of many compliance campaigns, compliments of the Division) aimed at foreign trusts.

Historically, and up until that time, foreign trusts including RESPs and RDSPs had to be reported on Forms 3520 ("*Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*") and 3520-A ("*Annual Information Return of Foreign Trust With a U.S. Owner*"). The penalties for failing to file on time (or at all) were pretty steep. The IRS was imposing $10,000 automatic penalty for late submission of the form or extension.

It seems the IRS has does have a soul after all. A new revenue procedure was issued on March 2, 2020. This new procedure effectively puts an end to U.S taxpayers with these types of trusts having to deal with the complex forms.

In fact, Revenue Procedure 2020-17 not only provides an exemption from information reporting requirements for qualifying "tax-favored foreign retirement trusts" and "tax-favored non-retirement savings trusts" of eligible U.S. individuals, it also provides relief for individuals who were assessed penalties.

So, who is eligible? As long as you are a U.S. taxpayer who has met your income tax compliance obligations in reporting on these trusts to-date, you're as good as gold.
And what qualifies as a tax-favored foreign retirement trusts and tax-favored non-retirement savings trusts?

Specifically, a **tax-favored foreign retirement trust** is a trust that is intended for saving money for retirement purposes (e.g., Registered

Retirement Savings Plans, the simplified reporting which has been previously addressed in the IRS guidance) and is exempt from income tax in the country where the trust is held.
Similarly, a **tax-favoured non-retirement trust** is exempt from income tax in the country where the trust is held, and withdrawals, distributions or payments must be for the provision of medical, disability, or educational benefits (e.g. RESPs, RDSPs). Contributions to non-retirement trusts are limited to $10,000 or less annually or $200,000 or less over the participant's lifetime.

To apply for relief for the previously assessed penalties related to RESP and RDSP, taxpayers should file Form 843 and indicate on line 7 that they are filing for "Relief pursuant to Revenue Procedure 2020-17" along with an explanation as to how they and the relevant trust(s) meet the requirements for eligibility.
It's important to note that, despite this abatement of reporting requirements around the 3520 and 3520-A Forms, U.S. taxpayers are still required to report the income earned in those accounts on their US income tax return Form 1040, "*US Individual Income Tax Return*" and disclose the maximum balance on Form 8938, *"Statement of Specified Foreign Financial Asset"* as well as on FinCEN Form 114, *"Report of Foreign Bank and Financial Accounts"* (FBAR). And in standard IRS fashion, steep penalties can be levied for non-compliance with these reporting requirements.

For all the finer details on the new procedure and how to apply for relief, visit the IRS website at https://www.irs.gov/pub/irs-drop/rp-20-17.pdf. Or contact us at HCBT for the straight goods.