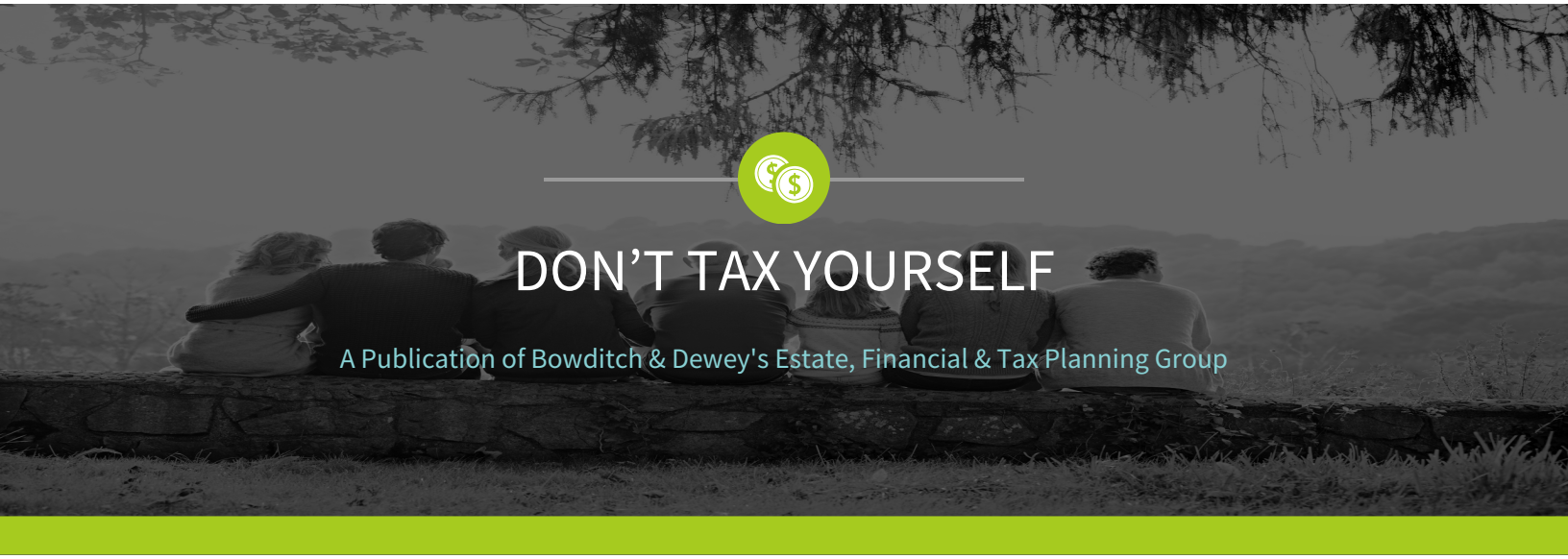

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IRS Reporting Requirements for Foreign Retirement Accounts

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Section 6048 of the Internal Revenue Code requires reporting of a U.S. citizen or resident alien's (a) transfers to a foreign trust, (b) annual financial information related to the U.S. person's interest in a foreign trust, and (c) distributions from a foreign trust to the U.S. person. The U.S. person must file two forms with the IRS to comply with these reporting obligations: IRS Form 3520 to report transfers to and distributions from a foreign trust for the tax year and IRS Form 3520-A to report certain financial information and trust distributions for the tax year. Section 6048 applies broadly: it adopts no minimum monetary threshold for reporting. The provision exempts from reporting *only* transfers to certain employer funded deferred compensation trusts as well as transfers to certain 501(c)(3) charitable trusts.

The IRS has in the past interpreted section 6048 to require reporting of individual transfers to employee funded foreign retirement plans. It is quite common for U.S. expatriates working abroad and non-U.S. individuals with permanent U.S. residence to have such foreign retirement accounts without knowing they are subject to the complex reporting requirements above. Penalties for lack of compliance are significant. Section 6677 of the Code imposes penalties equal to the greater of $10,000 or 35% of the gross reportable amount for a failure to report a transfer to a foreign trust or distribution from a foreign trust and the greater of $10,000 or 5% of the gross reportable amount for a failure to report the foreign trust's financial information. The statute does provide a reasonable cause exception for imposition of such penalties.

Section 6048(d)(4) authorizes the Secretary to suspend or modify section 6048's reporting requirements if the United States has no significant tax interest in obtaining the required information. In 2014, the IRS issued Revenue Procedure 2014-55 to exempt U.S. taxpayers from reporting interests in certain Canadian retirement savings plans on Form 3520 or 3520-A. The Revenue Procedure did not apply to other foreign retirement accounts.

In March 2020, the IRS issued Revenue Procedure 2020-17 to exempt qualifying foreign retirement and certain non-retirement trusts from section 6048 reporting. To qualify for such exemption, a foreign retirement trust must meet the following requirements:

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1. The trust must generally be exempt from income tax under the laws of the trust's jurisdiction.
2. Annual information reporting with respect to the trust (or of its participants or beneficiaries) is provided, or is otherwise available, to the relevant tax authorities in the trust's jurisdiction.
3. Only contributions to the trust with respect to income earned from the performance of personal services are permitted.
4. Contributions to the trust are limited by a percentage of earned income, are subject to an annual limit of $50,000 or less to the trust, or are subject to a lifetime limit of $1,000,000 or less.
5. Withdrawals from the trust are generally conditioned upon reaching a specified retirement age, disability, or death.
6. In the case of an employer-maintained trust, the trust is nondiscriminatory (and includes a wide range of employees).

Under the Revenue Procedure, individuals who have been assessed a penalty under section 6677 for failing to comply with section 6048 with respect to such tax-favored foreign trusts can file IRS Form 843, Claim for Refund and Request for Abatement, to seek abatement of such penalties.

Other reporting rules still apply, however. Section 6038D, enacted in 2010, requires a specified person, which includes a U.S. citizen or resident alien, to report any interest in a specified foreign financial asset provided that the aggregate value of all such assets exceeds certain thresholds (generally $50,000 for individuals and $100,000 for married couples). A specified foreign financial asset includes interests in certain foreign retirement, pension, and non-retirement savings funds or accounts. Such accounts must be reported on Form 8938 with the IRS. FBAR reporting is also required for U.S. persons with non-U.S. bank accounts holding at least $10,000. The complexity of U.S. tax rules for U.S. expatriates and U.S. resident aliens is significant: talk with a tax adviser before filing your U.S. tax return.

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