

DUE DATE FOR IRS FORM 3520 FOR NON-RESIDENTS

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IRS form 3520 must be filed if, in the year, a US citizen or resident was the 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. On December 4, 2015, President Obama signed into law the 2015 Surface Transportation Act, which included changes to the filing deadlines of several IRS forms. Prior to the effective date of that act, 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 changed the deadline to April 15 for all form 3520 filers, including US non-residents, and it instructed the IRS to modify appropriate regulations to implement the new law.

The April 15 due date was effective for the 2016 taxable year; however, the IRS instructions to the 2016 version of form 3520 continued to state that a non-resident individual had until his or her US income tax return filing due date to file form 3520. The IRS did not update the instructions to the 2016 version of form 3520 to reflect the new April 15 due date for all filers. The IRS can impose a penalty of at least \$10,000 for failure to timely file form 3520, but the IRS did not do so for a non-resident individual who filed a 2016 form 3520 after April 15 but before June 15.

The IRS changed the instructions to form 3520 for the 2017 taxable year, however, to provide that April 15 is the due date for form 3520 for all filers, both resident and non-resident. Starting in October or November 2018, the IRS began automatically imposing the penalty for the late-filing of form 3520, including for a 2017 form 3520 filed after April 15, 2018 but before June 15, 2018. Many so-called late filers for the 2017 year should be able to get the late-filing penalty abated on the basis of reasonable cause if their form 3520 preparer did not properly advise them of the April 15 due date.

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For the 2018 taxable year, the IRS again modified the instructions to form 3520—this time in a welcome way—to specifically state that a non-resident individual who has until June 15 to file a US income tax return also has until June 15 to timely file form 3520. Interestingly, though, the act called upon the US Treasury Department to modify appropriate regulations to effectuate the act's due date changes, but Treasury did not do that with respect to the due date for form 3520. Nevertheless, the IRS's administrative action in its instructions for the 2018 version of form 3520 should provide a non-resident filer with a position to get a late-filing penalty abated, if the IRS were to impose one, for a form 3520 filed after April 15 but before June 15. One hopes that the IRS will not impose a late-filing penalty in that situation for the 2018 year, but it may be safer for Canadian residents and practitioners to simply file form 3520 (or a request for an extension of time to October 15 to file form 3520) by April 15 to avoid this risk.