Foreign Trusts and Corporations

If you are a US citizen or resident, you must report your ownership in any foreign trust, using IRS Form 3520 and/or 3520-A. Form 3520 is needed when certain events happen to a US person (US citizen or resident), such as; 1) creates a foreign trust, 2) transfers money or property to a foreign trust, 3) receives a distribution from a foreign trust, or 4) status has change and the US person is now considered an owner of the foreign trust. An example would be if a US person was named as a trustee of a foreign trust. Form 3520-A is the annual reporting form that must be filed to report the US owners and US beneficiaries.

Note: As an owner of a foreign trust, you may also need to file FBAR and/or FATCA (Form 8938) informational returns, as well as other possible tax filings.

There are a number of often confusing rules of when someone should file, but generally speaking, if you are more than a 50% owner of a foreign corporation (in some cases it can be as low as 10% ownership), you will need to file IRS Form 5471. You must file a separate Form 5471 for each foreign corporation you own.

Note: As an owner of a foreign corporation, you may also need to file FBAR and/or FATCA (Form 8938) informational returns, as well as other possible tax filings.

There are a couple of types of foreign corporations that might be of concern to you. The first type of foreign corporation is the type many Canadians have; they have a business that is run through a Canadian corporation. The US calls this type of corporation a "Controlled Foreign Corporation." To be a Controlled Foreign Corporation, more than 50% of the company is owned by a US person.

Note: Income generated from an active business can be deferred in the US, but once the business ceases and the corporation simply becomes a holding company, the income must be reported in the US, even if no divided is paid.

The other type of corporation is known as a Passive Foreign Investment Company (PFIC). A PFIC is a foreign corporation that is owned 50% or less by an US person. Also, to be a PFIC 75% or more of the income of the corporation is passive (interest, dividends, capital gains, rents, etc.), OR 50% or more of the assets produce passive income.

One example of a PFIC is a Canadian mutual fund structured as a corporation. In the case of a mutual, all of the income is flowed through to the shareholders and is taxed each year, as earned. This type of corporation can elect to be treated as a "Qualifying Electing Fund" (QEF).

It should be obvious by now that this is a very complex and confusing area of tax law. You definitely should hire a professional with cross border tax experience if you have a foreign trust or corporation.

How We Help:

- We can identify all of the issues and prepare the proper forms
- We can prepare and submit the proper withholding forms and amounts to the proper tax authorities
- We can work with you to identify strategies to potentially reduce your tax liability
- Learn more at Resources Page
- Read our Cross Border Books
- Contact us on line
- Call us toll-free 800-394-9462