



*The Oversight Group, LLC*  
*International Tax Compliance Oversight, LLC*

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## IRS PENALTIES

### Non-Filing International Tax Forms

(MAJOR FORMS)

Form 3520 – Annual Return to Report Transactions With Foreign Trusts  
& Receipt of Certain Foreign Gifts

**Due Date:** Form is due on the date that your income tax return is due, including extensions.

**Penalty:** Penalty applies if Form 3520 is not timely filed or if the information is incomplete or incorrect. Generally, the penalty is:

- 35% of the gross value of any property transferred to a foreign trust for failure by a U.S. transferor to report the transfer,
- 35% of the of the gross value of the distribution received from a foreign trust for failure by a U.S. person to report receipt of a distribution, or
- 5% of the amount of certain foreign gifts for each month for which the failure to report continues (not to exceed a total of 25% of the gift).

**Reasonable Cause** – No penalties will be imposed if the taxpayer can demonstrate that the failure to comply was due to reasonable cause and not willful neglect.

Form 3520 A - Annual Information Return of Foreign Trust With a U.S.  
Owner

**Due Date:** Form is due by the 15<sup>th</sup> day of the 3<sup>rd</sup> month after the end of the trust's tax year. An extension of time to file may be granted.

**Penalty:** Penalty applies if failed to file a timely Form 3520-A or if all required information is not furnished.

The U.S. owner is subject to a penalty equal to 5% of the gross value of the portion of the trust's assets treated as owned by the U.S. person at the close of that year. Additional penalties may be imposed if noncompliance continues after the IRS mails a notice of failure to comply with required reporting.

Criminal penalties may be imposed for failure to file on time and for filing a false or fraudulent return.

**Reasonable Cause** - No penalties will be imposed if the taxpayer can demonstrate that the failure to comply was due to reasonable cause and not willful neglect.

Form 8858 – Information Return of U.S. Persons With Respect to  
Foreign Disregarded Entities

**Due Date:** Due when your income tax return or information return is due, including extensions.

**Penalty:** A \$10,000 penalty is imposed for each annual accounting period for failure to furnish the required information. Any person who fails to file or report all of the information required will be subject to a reduction of 10% of the foreign taxes available for credit.

Criminal Penalties may apply for failure to file the information required.

Form 8865- Return of U.S. Persons With Respect to Certain Foreign Partnerships

**Due Date:** Form 8865 is due with your income tax return, or if applicable, partnership or exempt organization return, including extensions for that return.

**Penalty:** A \$10,000 penalty is imposed for each tax year of each foreign partnership for failure to furnish the required information. An additional \$10,000 is added for each month the failure continues after notification up to a maximum of \$50,000 per return. Any person who fails to file or report all of the information required will be subject to a reduction of 10% of the foreign taxes available for credit. Criminal Penalties may apply for failure to file or for filing false or fraudulent information.

Form 5471-Information Return of U.S. Persons With Respect to Certain Foreign Corporations

**Due Date:** Form 5471 is due with your income tax return or, if applicable, partnership or exempt organization return, including extension for that return.

**Penalty:** For failure to file a \$10,000 penalty is imposed for each annual accounting period of each foreign corporation. An additional \$10,000 is added for each month the failure continues after notification with a maximum of \$50,000 per return. Any person who fails to file or report all of the information required will be subject to a reduction of 10% of the foreign taxes available for credit. Criminal Penalties may apply for failure to file the information required.

Form 926- Return by a U.S. Transferor of Property to a Foreign Corporation

**Due Date:** Form 926 must be filed with the U.S. transferor's income tax return for the tax year that includes the date of the transfer.

**Penalty:** For failure to file the penalty equals 10% of the fair market value of the property at the time of the transfer. Penalty is limited to \$100,000 unless the failure to comply was due to intentional disregard.

**Reasonable Cause:** The penalty will not apply if the failure to comply is due to reasonable cause and not willful neglect.

Form 8621- Passive Foreign Investment Company

**Due Date:** Form 8621 is due with your income tax return including extension.

**Penalty:** There are no direct penalties for a failure to file the form.

Form TD F 90-22.1 – Report of Foreign Bank and Financial Accounts

**Due Date:** This form is due before June 30 of the year following the calendar year reported. There is no extension of time available for filing this report. This report is filed with the Department of the Treasury.

**Penalty:** Civil penalty for willfully failing to file can be as high as the greater of \$100,000 or 50% of the total balance of the foreign account. Criminal penalties including in certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years.

For More Information see: the Department of Treasury Memorandum - [www.oversight-group.com/memo](http://www.oversight-group.com/memo)