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MEMORANDUM

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RE:     INTERNATIONAL TAX COMPLIANCE  
          FOREIGN ASSETS (U.S. TAXPAYERS)  
          #3: FOREIGN TRUST (U.S. PERSON): REPORTABLE EVENT

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A *reportable event* is generally defined as the creation or funding (with money or property) of a foreign trust by a U.S. Person, including transfers by death. It also includes the death of a U.S. Person if the person was an owner of the foreign trust or any portion of the trust is includible in his or her gross estate. Transfers for fair market value are excluded. A *responsible party* is generally the trust grantor, the transferor, or executor involved in the reportable event.

To satisfy the Responsible Party Rules, the U.S. Person must report the event on Form 3520. This return is due at the same time as the person's federal income tax return, including extensions, but is filed separately from that return.

*Unlike the Form 3520-A filed under the Trust Rules, the U.S. Person is not required to file an extension separate from the extension for his or her tax return.*

***Beneficiary Rules***

U.S. Persons who receive a distribution from a foreign trust must report the distribution on Form 3520.

***Penalties***

The penalty for failure to timely file a **Form 3520-A** is equal to five percent of gross value of the trust's assets over which the U.S. Person is considered an owner. Each U.S. owner of the foreign trust may be subject to this penalty.

The penalty for violation of the Responsible Party and Beneficiary Rules (penalty for failure to timely file a **Form 3520**) is equal to 35 percent of the gross value of any property transferred to

or distributed by the foreign trust. Additional penalties up to the gross reportable amount may be imposed when the U.S. Person receives IRS notice of a violation and does not act to cure it.

Penalties may not be imposed, however, when the violation is due to reasonable cause and not willful neglect. The IRS applies the reasonable cause standard applicable to late-filing/late-payment penalties. The fact that a foreign jurisdiction would impose a penalty for disclosing the information is not considered reasonable cause. The refusal on the part of a foreign trustee to provide information for any other reason, including difficulty in producing the required information or provisions in the trust instrument that prevent the disclosure of required information, is also not a basis for reasonable cause.

***These penalties are payable on notice and demand. The IRS is not required to issue a notice of deficiency. A pre-payment appeal of the penalty is not automatically available.***

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