

# US reporting: requesting IRS filing extensions

28 March 2019 | Contributed by [Kozusko Harris Duncan](#)

[Foreign trust with US source income – Form 1040NR](#)  
[Foreign-owned LLCs – \*pro forma\* Form 1120 with Form 5472 attached](#)  
[Foreign trusts that made distributions to US beneficiary – Form 3520](#)  
[Foreign trust with US grantor – Form 3520-A](#)  
[Foreign trust with US trustee – FBAR \(FinCEN Form 114\)](#)  
[Foreign Account Tax Compliance Act](#)  
[Possible state tax filings](#)  
[Comment](#)

Even the best laid plans to file the various US forms on time can sometimes go astray (for further details please see "[US reporting: checklist for foreign trusts](#)"). When they do, it is prudent to request an extension to file the particular return. Careful attention should be paid to where and how to submit the request, as procedures are not necessarily the same for all returns.

## **Foreign trust with US source income – Form 1040NR**

If a foreign trust is required to file Form 1040NR, US Non-resident Alien Income Tax Return, it must do so by 15 April. If the return itself cannot be filed by the due date, Form 4868 must be filed by that date to obtain an automatic six-month extension to file Form 1040NR. This extension does not extend the time to pay any tax due. If tax is not paid by the original due date of 15 April, the foreign trust will owe interest on the unpaid tax and may owe penalties.

## **Foreign-owned LLCs – *pro forma* Form 1120 with Form 5472 attached**

By now, managers of foreign-owned limited liability companies (LLCs) should have determined whether the LLC had any reportable transactions during the 2018 tax year. If there were no such transactions, the LLC has no US filing requirement. If there were such transactions, but the manager does not have all of the details needed to prepare and file Form 5472 by the 15 April deadline, the LLC must request an extension (for further information please see "[Completing and filing Form 5472 for foreign-owned US LLC](#)").

If the LLC had no Form 5472 filing requirement in 2018 (the first year that this form was required of foreign-owned disregarded entities) and has not obtained a US tax identification number, the manager should apply for such number as soon as possible. The number, known as an employer identification number (EIN), is required to both file the *pro forma* Form 1120 with Form 5472 attached and request an extension to file the forms.

Extension requests must be made using Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns. Form 5472 cannot be submitted to the Internal Revenue Service (IRS) on its own; thus, the request must be made for an extension to file Form 1120. Filers should ensure that they include in Part II, Line 5a that the application is for calendar year 2018 or designate the short tax year.

Foreign-owned LLCs submit Form 7004 differently than other filers. The form can either be faxed (300 DPI or higher) or mailed, but the filer must use the specified fax number or mailing address found in the instructions to Form 5472, not in the instructions to Form 7004. Filers must write "Foreign-owned U.S. DE" across the top of Form 7004. As evidence that the extension was sought timely, filers should retain the fax transmission confirmation page. It is also common practice to mail US tax returns via certified mail, with a return receipt requested.

As long as the Form 7004 is properly filed prior to the regular 15 April due date, the extension will be granted automatically. The extended due date is 15 October. The IRS will not send a notification that the extension has been approved.

## **Foreign trusts that made distributions to US beneficiary – Form 3520**

## AUTHORS

[Jennie Cherry](#)



[George N Harris Jr](#)



The trustee of a foreign trust that made distributions to a US beneficiary in 2018 should provide the beneficiary with the appropriate beneficiary statement, including all specified items, by 15 March. The trustee does not file this statement directly with the IRS. If information was not available to complete the statement by the deadline, the trustee should coordinate with the US beneficiary's tax preparer. The beneficiary must file Form 3520 to report the receipt of the distribution from a foreign trust and attach the beneficiary statement. Form 3520 is filed with the US beneficiary's personal income tax return. By extending the time to file the income tax return, the beneficiary will extend the time to file Form 3520. If the beneficiary does not intend to request an extension, the trustee should complete and provide the beneficiary statement to the US beneficiary as soon as possible, even if past the 15 March deadline.

### **Foreign trust with US grantor – Form 3520-A**

Unlike the beneficiary statement, the trustee of a foreign trust whose grantor was a US person in 2018 files Form 3520-A directly with the IRS. The trustee also provides the grantor with an owner statement, which the grantor must file with Form 3520. If the trustee has missed the 15 March deadline, the Form 3520-A should be submitted as soon as possible with an explanation for the late submission. The US grantor is subject to penalties for the trustee's failure to file Form 3520-A, so the trustee should coordinate with the grantor's US tax preparer.

### **Foreign trust with US trustee – FBAR (FinCEN Form 114)**

In addition to Form 3520-A or US beneficiary statements, the US trustee of a foreign trust may have to file a 2018 foreign bank account report (FBAR) by 15 April. The FBAR must be filed electronically through a designated Financial Crimes Enforcement Network (FinCEN) reporting portal. The trustee must register as a portal user or authorise a third-party registered user to properly submit the FBAR. If the 15 April deadline is missed, there is an automatic extension to file by 15 October. At present, FinCEN does not require a separate submission to request the extension.

### **Foreign Account Tax Compliance Act**

Trustees of trusts that qualify as trustee-documented trusts must file 2018 Foreign Account Tax Compliance Act (FATCA) reports through the local portal if subject to a Model 1 intergovernmental agreement (IGA) (eg, Cayman, British Virgin Islands, Guernsey and New Zealand). These portals have their own compliance procedures and user guides. Many portals allow for direct submission of data rather than having to use the XML format required by the IRS, which is a real benefit for compliance officers.

Trustees in Model 2 IGA jurisdictions and trustees subject to the FATCA regulations must file an encrypted, XML format FATCA report directly with the IRS through the electronic International Data Exchange Service (IDES) filing portal. These reports are due on or before 1 April. To request an automatic 90-day extension to file FATCA reports, the trustee must file Form 8809-I with the IRS. Unlike the FATCA report itself, a paper Form 8809-I must be mailed to the IRS at the address specified in the instructions.

### **Possible state tax filings**

This article addresses only some of the federal filings that may be required of a foreign trust. Each state also has its own tax and reporting requirements. Trustees of foreign trusts may need to consider whether a state filing is necessary, especially in situations where investments have been made in a partnership or S corporation established under the law of a US state or income is generated from real or tangible property located in a state.

### **Comment**

It is important for trustees of foreign trusts not to miss US tax filing deadlines or, if unable to file by the due date, to submit a request for an extension to file. The IRS provides easy-to-access forms and instructions at '[www.irs.gov](http://www.irs.gov)'. Wrestling with the various filing requirements, forms, dates and methods of filing is better than incurring penalties for late filing or an IRS audit. Working together with the family office and a qualified US accountant or tax attorney to coordinate the necessary data and filings can ease the US compliance burden.

*For further information on this topic please contact [Jennie Cherry](mailto:jcherry@kozlaw.com) at Kozusko Harris Duncan's New York office by telephone (+1 212 980 0010) or email ([jcherry@kozlaw.com](mailto:jcherry@kozlaw.com)). Alternatively, contact [George N Harris Jr](mailto:gharris@kozlaw.com) at Kozusko Harris Duncan's Washington DC office by telephone (+1 202 457 7200) or email ([gharris@kozlaw.com](mailto:gharris@kozlaw.com)). Please note that the authors are unable to provide legal advice to non-clients. The Kozusko Harris Duncan website can be accessed at [www.kozlaw.com](http://www.kozlaw.com).*

Copyright in the original article resides with the named contributor.

---

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).