



MEMORANDUM

TO: Interested Parties
FR: Frank Clemente, Executive Director, Americans for Tax Fairness
RE: Explanation of How Trump's Tax Returns Could Shed Light on His Russian Connections
DT: May 18, 2017

This memo describes possible financial entanglements with Russia and Russian business interests that might be revealed on President Trump's tax returns. The memo describes (1) Trump's past financial entanglements with Russia, (2) the importance of disclosure of the tax filings of hundreds of Trump business entities in addition to Trump's personal tax returns, and (3) the value of the tax code's numerous foreign disclosure forms that Trump and his businesses may have filed with the IRS.

Trump's Financial Entanglements with Russia

There is already plenty of anecdotal evidence that Trump has over the past 25 years sought and secured business deals and investments in Russia and with prominent Russians. In the late 1990s and early part of this century, Trump engaged a Russian law firm to [trademark various versions of his own](#) name and that of his businesses. In 2007, Trump traveled to the "Millionaire's Fair" in [Moscow to promote Trump vodka](#). In 2008, Trump's elder son and business partner, Donald Trump, Jr., was quoted as saying "Russians make up a pretty disproportionate cross-section of a lot of our assets," adding that his family's businesses "see a [lot of money pouring in from Russia](#)." In 2013, another Trump son, Eric, reportedly said that "We have pretty much all the money we need from [investors in Russia](#)" to finance Trump golf courses. (Eric Trump denies saying this.)

In 2010, Trump partnered with the Russian-run Bayrock Group, successfully completing a [hotel in New York](#). In 2013, he brought his Miss Universe beauty pageant to Moscow, boasting that "almost [all of the oligarchs were in the room](#)." Trump is also under scrutiny for his possible [connections to a Russian state-run bank](#), VEB, which U.S. investigators are examining because it helped finance Toronto's Trump International Hotel and Tower.

None of these stories tell us if Trump currently has business dealings in Russia or with Russian leaders. His tax returns would give us a clearer, more up-to-date picture.

Trump's sudden dismissal of FBI Director James Comey came immediately after the director sought more resources [to investigate Russian meddling](#) in the 2016 presidential election—outside interference the FBI suspects the Trump campaign [may have supported](#). Of course, the more recent [revelation by Comey](#) that President Trump urged him to discontinue the

investigation of former National Security Adviser Michael Flynn’s connections with Russia is even more troubling. The plausibility of any such collusion depends a lot on how close Trump is with Russia and its leaders. As noted above, anecdotal evidence suggests President Trump has had over the years [substantial Russian business dealings](#). His tax returns should provide a better idea of whether this is true.

The Senate Intelligence Committee has also requested information on Trump and his associates from the Treasury Department’s [criminal division](#). Again, Trump’s tax returns could help detect any criminal financial behavior. From [Al Capone](#) to [Richard Nixon](#), targets of criminal investigation have often been tripped up by irregularities in their tax filings.

Thus, determining the extent of President Trump’s financial dealings in Russia and with Russian nationals is now more important than ever. Public access to his tax returns could help reveal some key truths.

Trump’s Attempt to Whitewash His Entanglements with Russia

On May 12, 2017, Trump’s lawyers [released a March 8 letter](#) that stated: “With a few exceptions -- as detailed below -- your tax returns do not reflect (1) any income of any type from Russian sources, (2) any debt owed by you or TTO [The Trump Organization] to Russian lenders or any interest paid by you or TTO to Russian lenders, (3) any equity investments by Russian persons or entities in entities controlled by you or TTO, or (4) any equity or debt investments by you or TTO in Russian entities.”

On its face, Trump’s lawyers imply that his tax returns do not reflect any financial dealings with Russia. However, the lawyers crafted the letter narrowly—and disregarded other potential information relevant to Russia that might be found on Trump’s tax returns. As a result, the case for demanding that Trump release his tax returns remains strong. For example:

- **The letter doesn’t define key terms, which leaves lots of room for excluding financial relationships between Trump and Russians.** For example:
 - “Russian sources”: Russian businesses and individuals often use subsidiaries in tax havens, such as [Cyprus, Luxembourg and the Netherlands](#) and increasingly in [Malta](#), to conduct business offshore. If the letter uses the term “Russian sources” to mean only individuals and companies located in Russia, it’s incomplete and deceptive.
 - “Your tax returns do not reflect”: This phrase implies a complete report on all the relevant documents, even though it appears Trump’s lawyers restricted their review to Trump’s personal tax returns. Thus, they may have ignored what might be reflected on the returns of his more than [500 pass-through business entities](#), which comprise The Trump Organization and are almost exclusively sole proprietorships, S corporations and/or partnerships.
 - “Equity investments”: The letter says that no Russian sources have “any equity investments” in organizations controlled by Trump, implying a lack of involvement. But Russians could still have substantial influence over Trump and his businesses by lending

them money. And in fact—like a lot of real estate developers and because of the favorable tax treatment of debt compared to equity—Trump has relied heavily during his career on borrowed money, calling himself [“The King of Debt.”](#)

- **The letter appears to restrict itself to Trump’s personal tax returns.** It does not appear to cover the underlying financial transactions of the 500 pass-through business entities of which Trump is the sole or principal owner, almost all of which file separate tax returns. To get a complete and accurate picture of Trump’s financial situation—including any possible ties to Russia—it’s necessary to see these related but separate tax returns, specifically the [Forms 1065](#) filed by partnerships in which Trump is a partner with others and [Forms 1120S](#) filed by any S corporations in which he is a shareholder.
- **The letter only addresses direct lending and ownership arrangements, not *indirect* lending or ownership relationships.** The letter does not answer whether Trump or his businesses received Russian loans or derived income from entities registered outside of Russia, such as in a tax haven or quite commonly in Delaware. It’s unlikely that Russian oligarchs, whose finances are famously opaque, would loan directly to Trump or his businesses. Instead they would most likely route any such loans through a third party entity in a tax haven ([Cyprus is particularly popular with Russians](#)) that in turn would hold through a Cayman Islands entity and/or Delaware LLC. Similarly, Trump’s businesses would not likely directly invest in a Russian firm. They would invest through a foreign corporation, most likely also located in a tax haven. And Trump might make his foreign investments through businesses he has registered in Delaware. [According to Bloomberg](#), “[m]ost of the 542 entities listed on [Trump’s] May 16 [2015] financial disclosure form are registered there.” (And last year, Trump shifted more than 110 registered or pending trademarks to Delaware, presumably because there is no state income tax on royalties from intellectual property, and the state has a [business registration system that requires little public disclosure](#).) Trump’s full tax returns, including those of his businesses, could help reveal such indirect ties because there are reporting requirements for ownership of foreign corporations and partnerships.
- **Businesses in which Trump is a substantial investor but not sole or principal owner could have Russian debts.** If one of his partnerships had such loans, interest payments on them would show up on Form 1065. If the loan had been made to an S corporation in which Trump was a shareholder, the interest would be reported on Form 1120S.

Full Disclosure Involves Much More Than Trump’s Personal Returns

President Trump’s business, The Trump Organization (TTO), is not a single entity, but rather a collection of some [500 so-called “pass-through” business entities](#). Pass-throughs—which include sole proprietorships, limited liability companies (LLCs), partnerships and S corporations—pay no taxes themselves. Instead, they pass through profits and losses to their owners, who pay any tax due on their personal returns at individual rates.

Even though they don't pay taxes directly, all but the smallest pass-throughs are required to file independent tax returns for informational purposes. For instance, each of [Trump's partnerships](#) is required to file [Form 1065](#) every year, specifying the sources of its income, expenses, gains, losses, etc. Any S corporation of which he is a shareholder must file [Form 1120S](#), providing the same kind of data. This is detailed information that would not be included on Trump's personal returns, which would only offer total dollar amounts derived from his many business sources.

To gain a true understanding of Trump's financial situation—including any relationships with Russia—disclosure of his taxes must involve the release of his personal returns *and* his pass-through returns (as well as those of any trusts he does business through).

The Basics: Detailing Income and Expenses

The schedules attached to the yearly tax returns of individuals, businesses and trusts provide detailed information on the sources of income and expenses that determine taxable income. The following schedules to [Form 1040](#) (Individual Income Tax Return) would be the first place to look to discover any Trump business connections with Russia or Russian-owned businesses. The recently released letter from his lawyers claims his returns from the past 10 years show none of the Russian connections that would be revealed by these forms. But these forms are only the first place to start.

[Schedule A](#) – Itemized Deductions

The “Miscellaneous Deductions” section of Schedule A could include investment expenses Trump personally incurred, including those that might relate to any Russian investments (although a Russian lender is unlikely to be identified).

[Schedule B](#) – Interest and Ordinary Dividends

This is where to find dividends from any Russian companies or stock funds that Trump owns shares in directly, as well as interest from any Russian financial institutions in which he maintains personal accounts.

[Schedule D](#) – Capital Gains and Losses

If Trump sold any directly-owned Russian assets, the results of the sale would be reported here.

[Schedule E](#) – Supplemental Income and Loss

This is where income from any Russian partnerships or trusts would appear, as well as rent and royalties from any Russian assets held directly by Trump.

Digging Deeper: The Tax Code's Numerous Foreign Disclosure Forms

The IRS requires taxpayers with foreign or cross-border financial dealings to disclose them through numerous forms. These forms request information about ownership in foreign businesses, foreign bank accounts, foreign income and other related matters. (Most of the

forms and their attendant schedules are filed along with the taxpayer's annual returns, although some have their own filing schedules.)

Following are the IRS forms that Trump would have most likely filed if he has foreign business dealings in Russia or with Russian-owned companies (including shell companies that may be incorporated in tax havens) and with nationals, who most likely would conduct much of their business through tax havens. Gaining access to these filed forms could provide a much clearer picture of President Trump's foreign financial entanglements.

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

Form 5471 requires [different levels of disclosure](#) depending on how much of a foreign corporation a U.S. taxpayer owns and how involved that owner is in the management of the company. But if Trump or any of his businesses acquired as little as 10% of a foreign firm, he or the business would have to announce that fact, along with other information, including the identity of other U.S. shareholders.

Form 5472 - Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business

If a foreign shareholder owns a quarter or more of a U.S. corporation, that company must file Form 5472 whenever the company conducts certain kinds of business transactions with that foreign shareholder, such as paying the shareholder rent. The IRS collects this information to [detect insider dealing](#): payments for goods or services at other than market values to the benefit of the foreign shareholder. If Russian investors made up 30% of a Trump S corporation, for instance, and the corporation paid excessive rent for space in those investors' office building, Form 5472 would help the IRS detect this irregularity.

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

As with Form 5471, [reporting requirements vary](#) depending on the size of the stake of the U.S. partner. But again, if Trump either directly or indirectly acquired as little as 10% of a foreign partnership, he might have to file Form 8865. He or his business might even have to supply income statements and balance sheets. The form's Schedule N, if required, would reveal any inside dealings between the foreign partnership and the filing partner.

Form 8621 - Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund

This form requires U.S. taxpayers to disclose their substantial investments in foreign investment funds, such as [hedge funds and mutual funds](#). Generally, if the investment exceeds \$25,000, the taxpayer is required to file the form, regardless of the percentage ownership in the company.

Form 8938 - Statement of Specified Foreign Financial Assets

Generally, individuals—though not other entities—holding over \$50,000 (\$100,000 for married couples) in [foreign banks or other financial institutions](#) must file Form 8938. Separately, individuals with more than \$10,000 in such accounts must file a [FinCEN Report 114](#) with the Financial Crimes Enforcement Network of the U.S. Treasury Department.

[Form 926](#) - Return by a U.S. Transferor of Property to a Foreign Corporation

Generally, if a U.S. individual or other entity makes [capital contributions in cash to a foreign corporation](#) within a 12-month period of greater than \$100,000 or enough to own at least 10% of the corporation, that taxpayer must file Form 926. So, if some year Trump or one of his partnerships pumped a couple of hundred thousand dollars into a St. Petersburg company or a company owned by a Russian oligarch that was incorporated in Cyprus, he would have to announce that fact by filing Form 926. Since this is a one-time filing requirement it would be important to get such filings for all years.

[Form 1116](#) – Foreign Tax Credit

American taxpayers can obtain a credit against their U.S. taxes for foreign taxes paid. If Trump filed for such a credit on [Form 1116](#) and listed Russia as the taxing authority or listed tax havens known to be favorite locations for Russian shell companies, we could learn that he had generated taxable income in Russia or Russian-connected countries.

[Form 8825](#) - Rental Real Estate Income and Expenses of a Partnership or an S Corporation

If one of Trump's businesses owns rental property in Russia, or in a tax haven frequently used by wealthy Russians, the income and expenses would be reported on Form 8825.

[Form 1042](#) - Foreign Person's U.S. Source Income Subject to Withholding

American taxpayers are generally required to withhold U.S. taxes on investment income paid to foreigners and report that withholding on Form 1042. Because of a tax treaty between the U.S. and Russia, the rate of U.S. tax may be reduced or the income may be exempted from tax, but the form must be filed in any event to demonstrate that the income recipient is eligible for the tax relief. The U.S. person or entity filing the return is a withholding agent and as such has joint liability for the U.S. tax if too little U.S. tax is withheld.