



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9610]

RIN 1545-BK68

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9610), which were published in the **Federal Register** on Monday, January 28, 2013 (78 FR 5874). The regulations related to information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities.

DATES: Effective Date: These corrections are effective **[INSERT DATE OF**

PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]

Applicability Date: These corrections are applicable on January 28, 2013.

FOR FURTHER INFORMATION CONTACT: John Sweeney, (202) 622-3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are §§1.1471-1 through 1.1474-7, promulgated under sections 1471 through 1474 of the Internal Revenue Code. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities, and affect payments by FFIs to other persons. Sections 1471 through 1474 were added to the Internal Revenue Code, as Chapter 4 of Subtitle A, by the Hiring Incentives to Restore Employment Act of 2010 (Public Law 111-147, 124 Stat. 71).

Need for Correction

As published, the final regulations contain a number of items that need to be corrected or clarified. Several citations and cross references are corrected. The correcting amendments also include the addition, deletion, or modification of regulatory language to clarify the relevant provisions to meet their intended purposes. Additions, deletions, and modifications are also made to ensure that the rules in the final regulations are coordinated with other rules contained in other relevant regulations (e.g., under chapters 3 and 61). For example in §1.1471-3(c)(3)(iii)(B)(2), the definition of an FFI withholding statement was modified to add an applicable cross reference to the reporting on the statement that is required under chapter 61 (in addition to the reporting required under chapters 3 and 4); to delete an incorrect reference to a pool of payees exempt from chapter 4 withholding; and to add the modified requirements of an FFI withholding statement provided by a Qualified Intermediary that should have been referenced in this paragraph.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1 - INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1471-0 is amended by:

1. Revising paragraph (a)(2)(i) under §1.1471-2.
2. Revising paragraphs (b)(7) and (c)(2)(v) under §1.1471-4.
3. Revising paragraph (b)(2)(i)(E) under §1.1471-5.
4. Revising paragraph (a)(5)(vii) and removing paragraph (b)(3)(iii) under §1.1473-1.

The revisions read as follows:

§1.1471-0 Outline of regulation provisions for sections 1471 through 1474.

* * * * *

§1.1471-2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(2) * * *

(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWP, or NWT.

* * * * *

§1.1471-4 FFI agreement.

* * * * *

(b) * * *

(7) Withholding requirements for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.

(c) * * *

(2) * * *

(v) Special rule for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.

* * * * *

§1.1471-5 Definitions applicable to section 1471.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(E) Account that is tax-favored.

* * * * *

§1.1473-1 Section 1473 definitions.

(a) * * *

(5) * * *

(vii) Special rules for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity.

* * * * *

Par. 3. Section 1.1471-1 is amended by revising paragraph (b)(23), the first sentence of paragraph (b)(34), and paragraph (b)(99) to read as follows:

§1.1471-1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(23) Customer master file. A customer master file includes the primary files of a withholding agent, participating FFI, or deemed-compliant FFI for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence.

* * * * *

(34) * * * The term electronically searchable information means information that a withholding agent or FFI maintains in its tax reporting files, customer master files, or similar files, and that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. * * *

* * * * *

(99) Pre-FATCA Form W-8. The term pre-FATCA Form W-8 means a version of a Form W-8 that was issued by the IRS prior to 2013 (including an acceptable substitute form based on such version) and that does not contain chapter 4 statuses but otherwise meets the requirements of §1.1441-1(e)(1)(ii) applicable to such certificate (or substitute form) and has not expired.

* * * * *

Par. 4. Section 1.1471-2 is amended by:

1. Revising the heading and first two sentences of paragraph (a)(2)(i),
2. Revising the first sentence of paragraph (a)(2)(iii)(A),
3. Revising paragraphs (a)(2)(iii)(A)(2) and (a)(2)(iv),
4. Revising the second and fourth sentences of paragraph (a)(2)(v),
5. Revising the first sentence of paragraph (a)(4)(i)(A), and
6. Revising paragraph (a)(4)(viii).

The revisions read as follows:

§1.1471-2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(2) * * *

(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWP, or NWT. A withholding agent that, after December 31, 2013, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a NWP or NWT, must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in §1.1471-3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of §1.1471-3(d)(4) and a withholding statement that meets the requirements of §1.1471-3(c)(3)(iii)(B) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. * * *

* * * * *

(iii) * * *

(A) * * * A withholding agent is required to withhold with respect to a payment, or portion of a payment, that is U.S. source FDAP income subject to withholding that is made after December 31, 2013, to a QI that has elected in accordance with this paragraph to be withheld upon, unless such withholding agent also makes an election to be withheld upon under this paragraph (a)(2)(iii)(A) or is an FFI that may not accept primary withholding responsibility for the payment. * * *

* * * * *

(2) The person who receives the payment is a participating FFI or registered deemed-compliant FFI that acts as a QI with respect to the payment;

* * * * *

(iv) Withholding obligation of a territory financial institution. A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment has an obligation to withhold (to the extent required under this section and §1.1472-1(b)) if it agrees to be treated as a U.S. person with respect to the payment for purposes of both chapter 4 and §1.1441-1(b)(2)(iv)(A). A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment is not required to withhold under paragraph (a)(1) of this section or §1.1472-1(b), however, if it has provided the withholding agent that is a U.S. withholding agent, participating FFI, reporting Model 1 FFI, or QI with all of the documentation described in §1.1471-3(c)(3)(iii) (in which it has not agreed to be treated as a U.S. person with respect to the payment), and it does not know, or have reason to

know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under §1.1474-1(d).

(v) * * * Accordingly, a QI branch of a U.S. financial institution must withhold in accordance with this section and §1.1472-1(b) in addition to meeting its obligations under either §1.1471-4(b) and its FFI agreement or §1.1471-5(f). * * * Accordingly, a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI must withhold in accordance with this section and §1.1472-1(b). * * *

* * * * *

(4) * * *

(i) * * *

(A) * * * A withholding agent that is not related to the payee or beneficial owner has an obligation to withhold under chapter 4 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (a)(4)(i)) and the due date for filing the return on Form 1042 (including extensions) for the year in which the payment occurs, it has control over or custody of money or property owned by the payee or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. * * *

* * * * *

(viii) Payments to certain excepted accounts A withholding agent is not required to withhold under chapter 4 on a withholdable payment made to an account described in §1.1471-5(b)(2).

* * * * *

Par. 5. Section 1.1471-3 is amended by:

1. Revising the fourth sentence of paragraph (b)(2),
2. Adding a sentence to the end of paragraph (c)(2)(i),
3. Revising paragraph (c)(3)(iii)(A)(5),
4. Revising the first two sentences of paragraph (c)(3)(iii)(B)(2),
5. Revising the first sentence of paragraph (c)(6),
6. Revising paragraphs (c)(6)(ii)(B)(2), (c)(6)(ii)(B)(3), and (c)(6)(ii)(C)(2)(vi),
7. Revising the second sentence of paragraph (c)(6)(v)(B),
8. Revising the second sentence of paragraph (c)(9)(iv)(A),
9. Revising the first sentence of paragraph (d)(1),
10. Revising the second sentence of paragraph (d)(2)(i),
11. Revising paragraph (d)(2)(ii),
12. Revising the second sentence of paragraph (d)(2)(iii),
13. Revising the second sentence of paragraph (d)(4)(i),
14. Revising paragraph (d)(6)(i)(F),
15. Revising the third sentence of paragraph (d)(6)(ii),
16. Revising the first sentence of paragraph (d)(6)(iii), and
17. Revising the first sentence of paragraph (d)(9)(i)(A).

The revisions and addition read as follows:

§1.1471-3 Identification of payee.

* * * * *

(b) * * *

(2) * * * A withholding agent that makes a payment with respect to an offshore obligation may also rely upon a written notification provided by the person who receives

the payment, regardless of whether such notification is signed, that indicates the person's entity classification (other than as a QI, WP, or WT) unless the withholding agent knows or has reason to know that the entity classification indicated by the person who receives the payment is incorrect. * * *

* * * * *

(c) * * *

(2) * * *

(i) * * * With respect to the documentation provided for the owners of a foreign flow-through entity, the foreign flow-through entity is permitted to provide the documentary evidence described in paragraph (d) of this section applicable to each payee in lieu of a withholding certificate, regardless of whether the payment is made with respect to an offshore obligation.

* * * * *

(3) * * *

(iii) * * *

(A) * * *

(5) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a U.S. branch of such an entity), and an EIN in the case of a QI, WP, or WT.

* * * * *

(B) * * *

(2) * * * An FFI withholding statement must include either pooled information that indicates the portion of the payment attributable to a class of U.S. persons, each class

of recalcitrant account holders identified in §1.1471-5(g)(2), or a class of nonparticipating FFIs; or payee-specific information, if payee-specific information is provided for purposes of chapter 3 or 61, which indicates both the portion of the payment attributable to each payee and each payee's chapter 4 status. Regardless of whether the FFI withholding statement provides information on a pooled or payee-specific basis, a withholding statement provided by an FFI other than an FFI acting as a QI with respect to the account must identify each intermediary or flow-through entity that receives the payment on behalf of a payee with such entity's chapter 4 status and GIIN, when applicable. * * *

* * * * *

(6) * * * The provisions in this paragraph (c)(6) describe standards generally applicable to withholding certificates on Forms W-8 (or substitute forms), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. * * *

* * * * *

(ii) * * *

(B) * * *

(2) A beneficial owner withholding certificate and documentary evidence supporting the individual's claim of foreign status when both are provided together by an individual claiming foreign status, if the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee and does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee;

(3) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(2) of this section and documentary evidence establishing the entity's foreign status when both are provided together;

* * * * *

(C) * * *

(2) * * *

(vi) A territory financial institution;

* * * * *

(v) * * *

(B) * * * However, in addition to the name and address of the individual that is the payee or beneficial owner, the form must provide all countries for which the individual is a resident for tax purposes, the individual's city and country of birth, a tax identification number, if any, for each country of residence (or the individual's date of birth if the individual does not have a foreign tax identification number for the country of residence claimed), and must contain a signed and dated certification made under penalties of perjury that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. * * *

* * * * *

(9) * * *

(iv) * * *

(A) * * * However, an agent that makes a payment pursuant to an agency arrangement (paying agent) is also a withholding agent with respect to the payment unless an exception under §1.1473-1(d) applies. * * *

* * * * *

(d) * * *

(1) * * * To establish a payee's status as a foreign individual, foreign government, government of a U.S. territory, or international organization, a withholding agent may rely upon a pre-FATCA Form W-8 in lieu of obtaining an updated version of the withholding certificate. * * *

(2) * * *

(i) * * * Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W-9 as a specified U.S. person unless the Form W-9 certifies that the payee is other than a specified U.S. person. * * *

(ii) Reliance on documentary evidence. A withholding agent may also treat the payee as a U.S. person that is other than a specified U.S. person if the withholding agent has documentary evidence described in paragraphs (c)(5)(i)(C) and (D) of this section or general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that both establishes that the payee is a U.S. person and establishes (either through the documentation or the application of the rules in §1.6049-4(c)(1)(ii) or paragraph (f)(3) of this section) that the payee is an exempt recipient. For purposes of the previous sentence, an exempt recipient means with respect to a withholding agent other than a participating FFI or registered deemed-compliant FFI, an exempt recipient

under §1.6049-4(c)(1)(ii) or, with respect to a withholding agent that is a participating FFI or registered deemed-compliant FFI, a U.S. person other than a specified U.S. person as described under §1.1473-1(c).

(iii) * * * A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee as a U.S. person if it has previously reviewed a Form W-9 or documentary evidence that established that the payee is a U.S. person and established (through the documentation or the application of the rules in §1.6049-4(c)(1)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

* * * * *

(4) * * *

(i) * * * For payments made prior to January 1, 2016, a registered deemed-compliant FFI that is a sponsored FFI must provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN.

* * * * *

(6) * * *

(i) * * *

(F) The withholding agent does not know or have reason to know that the payee is a member of an expanded affiliated group with any other FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent or that the FFI has any specified U.S. persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding \$50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

(ii) * * * A withholding agent may rely upon the letter described in this paragraph (d)(6)(ii) if it does not know or have reason to know that any of the information contained in the letter is unreliable or incorrect.

(iii) * * * Acceptable documentation for an individual owning an equity interest in the payee or a debt holder described in paragraph (d)(6)(iv) of this section means a valid withholding certificate, valid Form W-9 (including any necessary waiver), or documentary evidence establishing the foreign status of the individual as set forth in paragraph (d)(3)(ii) of this section (regardless of whether the payment is made with respect to an offshore obligation). * * *

* * * * *

(9) * * *

(i) * * *

(A) * * * A withholding agent may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if it has a withholding certificate that identifies the payee as such an entity, indicates that the payee is the beneficial owner of the payment, and indicates that the payee is not engaged in commercial financial activities with respect to the payments or accounts identified on the form. * * *

* * * * *

Par. 6. Section 1471-4 is amended by:

1. Revising the seventh sentence of paragraph (b)(1),
2. Revising the first and third sentences of paragraph (b)(2),
3. Revising the fifth sentence of paragraph (b)(3),

4. Revising paragraph (b)(7),
5. Revising the first and third sentences of paragraph (c)(2)(iii)(B),
6. Revising the second sentence of paragraph (c)(2)(iii)(C),
7. Revising the heading and first sentence of paragraph (c)(2)(v),
8. Removing the language “this paragraph (c)(5)(iv)(D)” from paragraph (c)(5)(iv)(D)(4) and adding “paragraph (c)(5)(iv)(D)(3) of this section” in its place,
9. Revising the second, fourth, and eighth sentences of paragraph (c)(6)

Example 2.

10. Revising the fourth sentence of paragraph (c)(7),
11. Revising paragraphs (d)(2)(iii)(B) introductory text, (d)(2)(iii)(B)(4), (d)(3)(iv)(B), and (d)(3)(iv)(D),
12. Revising the third sentence of paragraph (d)(4)(i),
13. Revising paragraph (d)(5)(iii)(B),
14. Revising the first sentence of paragraph (d)(6)(i),
15. Revising paragraph (d)(7)(ii)(A)(1),
16. Revising the first sentence of paragraph (e)(2)(ii),
17. Removing the language “as of February 15, 2012, and” from paragraph (e)(2)(iii),
18. Revising paragraph (e)(2)(iv)(B),
19. Revising the second sentence of paragraph (e)(3)(ii)(B),
20. Revising paragraph (e)(3)(iii)(B), and
21. Revising the first sentence of paragraph (i)(1).

The revisions read as follows:

§1.1471-4 FFI agreement.

* * * * *

(b) * * *

(1) * * * See §1.1471-2 for the exceptions to and special rules for withholding and the exclusion from the definition of withholdable payment and foreign passthru payment that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. * * *

(2) * * * Except as otherwise provided under §1.1471-2 and, with respect to certain preexisting accounts under paragraph (c) of this section, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. * * * For a payment made to an account held by an entity, except as otherwise provided in §1.1471-3(a)(3), the payee is the account holder. * * *

(3) * * * See the QI, WP, or WT agreement for the withholding requirements of an FFI that is a QI, WP, or WT for purposes of chapter 4.

* * * * *

(7) Withholding requirements for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons. A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts held at the U.S. branch by account holders that are payees treated as other than exempt recipients under chapter 61 will be treated as satisfying its withholding

obligation with respect to such accounts under section 1471(b)(1) and this paragraph (b). See paragraph (d)(2)(iii)(B) of this section for the special reporting requirements applicable to U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons. See paragraphs (c)(2) and (d)(4) of this section for the reporting requirements of U.S. branches of participating FFIs (and reporting Model 1 FFIs) with respect to payments that are chapter 4 reportable amounts.

(c) * * *

(2) * * *

(iii) * * *

(B) * * * For purposes of this section, a change in circumstances (as defined in §1.1471-3(c)(6)(ii)(E)) includes any change or addition of information to the account holder's account (including the addition, substitution, or other change of an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in §1.1471-5(b)(4)(iii) or by treating the accounts as consolidated obligations) if such change or addition of information affects the chapter 4 status of the account holder. * * * With respect to a preexisting account that meets a documentation exception described in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section, a change in circumstances also includes a change in account balance or value as of the end of the first subsequent year that causes the account no longer to meet the documentation exception.

(C) * * * With respect to an account held by an entity other than a passive NFFE described in the preceding sentence, following a change in circumstances, the participating FFI must retain a record of the appropriate documentation described in

paragraph (c)(3) of this section by the date that is 90 days after the change in circumstances or, if unable to do so, must treat such account as held by a nonparticipating FFI.

* * * * *

(v) Special rule for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons. A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall apply, in lieu of the due diligence requirements of this paragraph (c), the due diligence requirements of §1.1471-3 to determine the chapter 4 status of account holders and payees that are entities and shall apply the documentation requirements of chapter 3 or 61 (as applicable) with respect to individual account holders. * * *

* * * * *

(6) * * *

Example 2. * * * The balance in U's depository account on the effective date of CB's FFI agreement is \$20,000. * * * The balance in Entity X's account on the effective date of CB's FFI agreement is \$130,000, and the balance in Entity Y's account on the effective date of CB's FFI agreement is \$110,000. * * * U's depository account qualifies for the §1.1471-5(a)(4)(i) exception to U.S. account status because it does not exceed the \$50,000 threshold, taking into account the aggregation rule described in §1.1471-5(a)(4)(iii)(A). * * *

(7) * * * The responsible officer must also certify that the participating FFI has completed the account identification procedures and documentation requirements of this paragraph (c) for all other preexisting accounts or, if it has not retained a record of

the documentation required under this paragraph (c) with respect to an account, treats such account in accordance with the requirements of this section and §1.1471-5(g) or §1.1471-3(f) (as applicable). * * *

(d) * * *

(2) * * *

(iii) * * *

(B) Special reporting rules for U.S. branches treated as U.S. persons. A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraphs (d)(2)(i) and (d)(2)(ii)(C) of this section if it reports under--

* * * * *

(4) Section 1.1474-1(i) with respect to specified U.S. persons identified in §1.1471-3(d)(6)(iv)(A)(1) and (2) of owner-documented FFIs.

(3) * * *

(iv) * * *

(B) The name, address, and TIN of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1) and (2);

* * * * *

(D) The account balance or value of the account held by the owner-documented FFI;

* * * * *

(4) * * *

(i) * * * In the case of an account held by an owner-documented FFI, the address to be reported is the address of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1) and (2).

* * * * *

(5) * * *

(iii) * * *

(B) The name, address, and TIN of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1) and (2); and

* * * * *

(6) * * *

(i) * * * Except as otherwise provided in a Model 2 IGA, a participating FFI, as part of its reporting responsibilities under this paragraph (d), shall report to the IRS for each calendar year the information described for each of the classes of account holders described in paragraphs (d)(6)(i)(A) through (E) of this section. * * *

* * * * *

(7) * * *

(ii) * * *

(A) * * *

(1) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is an NFFE that is a U.S. owned foreign entity or that is an owner-documented FFI, the name of such entity and the name, address, and TIN of each substantial U.S. owner of such NFFE or, in the case of

an owner-documented FFI, of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1) and (2);

* * * * *

(e) * * *

(2) * * *

* * * * *

(ii) * * * For purposes of this section, a branch is a unit, business, or office of an FFI that is treated as a branch under the regulatory regime of a country or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI. * * *

* * * * *

(iv) * * *

(B) Agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years from the effective date of the FFI agreement or for as long as the branch maintains the account or obligation, and report to the IRS with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch;

* * * * *

(3) * * *

(ii) * * *

(B) * * * See paragraph (e)(2)(iii)(B) of this section for when an account is considered blocked.

(iii) * * *

(B) Agree as part of such registration to identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years from the effective date of its registration as a limited FFI or for as long as the FFI maintains the account or obligation, and report with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the FFI;

* * * * *

(i) * * *

(1) * * * Except to the extent otherwise provided in a Model 2 IGA, a participating FFI (or branch thereof) that is prohibited by foreign law from reporting the information required under paragraph (d) of this section with respect to a U.S. account must follow the procedures of paragraph (i)(2) of this section to obtain a valid and effective waiver of such law and, if such waiver is not obtained within a reasonable period of time, to close or transfer such account. * * *

* * * * *

Par. 7. Section 1.1471-5 is amended by:

1. Removing the language “(e)(3)(iv)” from paragraphs (b)(1)(iii)(A), (b)(1)(iii)(B), and (b)(1)(iii)(C) and adding “(b)(3)(iv)” in its place,
2. Revising paragraphs (b)(2)(i)(C) and (b)(2)(v),

3. Revising the first sentence of and adding a new second sentence in paragraph (b)(3)(iv),
4. Revising the third sentence of paragraph (b)(4)(iv),
5. Revising the third, fourth, and fifth sentences of paragraph (e)(4)(v) Example1,
6. Revising the second sentence of paragraph (e)(5),
7. Adding the language “and income derived from transactions between members of the expanded affiliated group” to the end of the first parenthetical in paragraph (e)(5)(i)(B)(1),
8. Revising paragraphs (e)(5)(iv)(D), (f)(1)(i)(F)(3)(i), and (f)(1)(i)(F)(3)(iii),
9. Revising the first sentence of paragraph (f)(2),
10. Revising paragraph (f)(2)(iii)(B),
11. Revising the first sentence of paragraph (f)(3)(ii)(E),
12. Removing the language “§1.1471-4(c)(8)” in paragraph (g)(3)(i)(B) and adding “§1.1471-4(c)(5)(iv)(D)” in its place,
13. Revising the first sentence of paragraph (g)(3)(ii), and
14. Revising the first sentence of paragraph (g)(3)(iii).

The revisions read as follows:

§1.1471-5 Definitions applicable to section 1471.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) Rollovers. An account that otherwise satisfies the requirements of paragraph (b)(2)(i)(A) or (B) of this section will not fail to satisfy such requirements solely because such account may receive assets or funds transferred from one or more accounts that meet the requirements of paragraph (b)(2)(i)(A) or (B) of this section, one or more retirement or pension funds that meet the requirements of §1.1471-6(f), one or more accounts described in paragraph (b)(2)(vi) of this section, or one or more entities identified as nonreporting financial institutions under the terms of an applicable Model 1 or Model 2 IGA because they are retirement or pension funds.

* * * * *

(v) Certain annuity contracts. A non-investment linked, non-transferable, immediate life annuity contract (including a disability annuity) that monetizes a retirement or pension account described in paragraph (b)(2)(i)(A) or (b)(2)(vi) of this section.

* * * * *

(3) * * *

(iv) * * * To determine if debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded, the principles of §1.1472-1(c)(1)(i)(A)(2)(i) and (ii) shall apply with respect to the interests, and the principles of §1.1472-1(c)(1)(i)(B)(1) shall apply for this purpose in the case of an initial public offering of such interests. See §1.1472-1(c)(1)(i)(C) for the definition of an established securities market. * * *

* * * * *

(4) * * *

* * * * *

(iv) * * * In the case of an FFI determining whether an account meets (or continues to meet) a preexisting account documentation exception described in §1.1471-4(c)(3)(iii) or (c)(5)(iii), or whether the account is an account described in paragraph (a)(4)(i) of this section, the spot rate must be determined on the date for which the FFI is determining the threshold amount as prescribed in those provisions.

* * * * *

(e) * * *

(4) * * *

(v) * * *

Example 1. * * * Fund Manager hires Investment Advisor, a foreign entity, to provide advice and discretionary management of a portion of the financial assets held by Fund A. Investment Advisor earned more than 50% of its gross income for the last three years from providing similar services. Because Investment Advisor primarily conducts a business of managing financial assets on behalf of clients, Investment Advisor is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

* * * * *

(5) * * * For the treatment of foreign entities described in this paragraph under section 1472, see §1.1472-1(c)(1)(v).

* * * * *

(iv) * * *

(D) The entity has not agreed to report under §1.1471-4(d)(2)(ii)(C) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) * * *

(3) * * *

(i) Is authorized to act on behalf of the FFI (such as a fund manager, trustee, corporate director, or managing partner) to fulfill the requirements of the FFI agreement;

* * * * *

(iii) Has registered the FFI with the IRS by the later of January 1, 2016, or the date that the FFI identifies itself as qualifying under this paragraph (f)(1)(i)(F);

* * * * *

(2) * * * A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (iv) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in §1.1471-3(d)(5) applicable to the relevant deemed-compliant category. * * *

* * * * *

(iii) * * *

(B) A participating FFI, reporting Model 1 FFI, or U.S. financial institution agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

* * * * *

(3) * * *

(ii) * * *

(E) The designated withholding agent agrees to report to the IRS (or, in the case of a reporting Model 1 FFI, to the relevant foreign government or agency thereof) all of the information described in §1.1471-4(d) or §1.1474-1(i) (as appropriate) with respect to any specified U.S. persons that are identified in §1.1471-3(d)(6)(iv)(A)(1) and (2). * * *

* * * * *

(g) * * *

(3) * * *

(ii) * * * An account holder of an account other than a preexisting account and that is described in paragraph (g)(2) of this section will be treated as a recalcitrant account holder beginning on the date that is the earlier of 90 days after the account is opened by the participating FFI or the date that a withholdable payment that is subject to withholding under §1.1441-2(a) is made to the account. * * *

(iii) * * * An account holder holding an account that is described in paragraph (g)(2) of this section following a change in circumstances (other than a change in account balance or value in a subsequent year that causes an individual account to be identified as a high-value account) will be treated as a recalcitrant account holder beginning on the date that is 90 days after the change in circumstances. * * *

* * * * *

Par. 8. Section 1471-6 is amended by revising paragraph (h)(2)(ii) to read as follows:

§1.1471-6 Payments beneficially owned by exempt beneficial owners.

* * * * *

(h) * * *

(2) * * *

(ii) The entity has no outstanding debt that would be a financial account under §1.1471-5(b)(1)(iii)(C); and

* * * * *

Par. 9. Section 1.1472-1 is amended by revising the fourth sentence of and adding a new fifth sentence to paragraph (a), and revising paragraphs (b)(1) introductory text, (b)(2), and (c)(2)(i) to read as follows:

§1.1472-1 Withholding on NFFEs.

(a) * * * See §1.1473-1(a)(4)(vi), however, for rules excepting from the definition of withholdable payment certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation and §1.1471-2(b) for rules excepting from the definition of withholdable payment a grandfathered obligation. See also §1.1471-2(a)(2)(ii), (iv), (v), and (vi) for special rules of withholding that apply for purposes of this section and §1.1471-2(a)(5) for withholding requirements if the source or character of a payment is unknown.

(b) * * *

(1) In general. Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief), paragraph (c) of this section (providing exceptions for payments to an excepted NFFE, a WP or WT, or an exempt beneficial owner), §1.1471-2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), §1.1471-2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or §1.1471-2(a)(4)(viii) (providing an

exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an NFFE unless--

* * * * *

(2) Transitional relief. For any withholdable payment made prior to January 1, 2016, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE when the NFFE has failed to provide the owner certification as required under §1.1471-3(d)(12)(iii), the withholding agent is not required to withhold under this section or report under §1.1474-1(i)(2) (describing the reporting obligations of withholding agents with respect to NFFEs).

(c) * * *

(2) * * *

(i) Treat the payee as an NFFE that is a WP or WT in accordance with §1.1441-5(c)(2) (for a WP) or §1.1441-5(e)(5)(v) (for a WT); or

* * * * *

Par. 10. Section 1.1473-1 is amended by:

1. Removing the second sentence of paragraph (a)(3)(iii)(A),
2. Revising the second sentence of paragraph (a)(4)(iii),
3. Revising the first sentence of paragraph (a)(4)(vi),
4. Revising the heading of paragraph (a)(5)(vii),
5. Removing the language "beneficiary" from paragraph (b)(3)(ii)(A) and adding "person" in its place, and

6. Removing the language “trust; or” from paragraph (b)(3)(ii)(B) and adding “trust as of the end of the prior calendar year; or” in its place.

The revisions read as follows:

§1.1473-1 Section 1473 definitions.

(a) * * *

(4) * * *

(iii) * * * Notwithstanding the preceding sentence, excluded nonfinancial payments do not include: payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; premiums for insurance contracts or annuity contracts; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute interest described in §1.861-2(a)(7)) other than interest described in the preceding sentence; gross proceeds other than gross proceeds described in paragraph (a)(4)(iv) of this section; investment advisory fees; custodial fees; and bank or brokerage fees.

* * * * *

(vi) * * * A payment of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation if such payment is made by a person that is not acting as an intermediary or as a WP or WT with respect to the payment. * * *

(5) * * *

(vii) Special rules for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity. * * *

* * * * *

Par. 11. Section 1.1474-1 is amended by:

1. Revising paragraph (a)(2),
2. Revising the first sentence of paragraph (b)(1),
3. Removing the language “Except as otherwise provided under an FFI agreement, a” in the first sentence of paragraph (c)(2) and adding “A” in its place,
4. Removing the language “(including its U.S. branch that is not treated as a U.S. person)” from paragraphs (d)(1)(ii)(A)(1)(iii), (d)(1)(ii)(B)(1)(i), and (d)(1)(ii)(B)(1)(iii) and adding “(including a U.S. branch of a participating FFI that is not treated as a U.S. person)” in its place,
5. Revising the second and sixth sentences of paragraph (d)(4)(i)(B),
6. Revising paragraph (d)(4)(i)(C)(1),
7. Removing the language “If the U.S. branch is not treated” from paragraphs (d)(4)(i)(C)(2) and (d)(4)(i)(C)(3) and adding “If the U.S. branch of a participating FFI is not treated” in its place,
8. Removing the language “its reporting pools as described in paragraph (d)(4)(i)(B)” from paragraph (d)(4)(i)(C)(2) and adding “its reporting pools referenced in paragraph (d)(4)(i)(B)” in its place,
9. Revising the first sentence of paragraph (d)(4)(ii)(C),
10. Revising the first, second, and fifth sentences of paragraph (d)(4)(iii)(A),
11. Revising the first sentence of paragraph (d)(4)(iii)(B),
12. Revising paragraph (d)(4)(iii)(C),
13. Revising the first sentence of paragraph (i)(1), and
14. Revising paragraphs (i)(1)(ii), (i)(1)(iii), and (i)(2)(iii).

The revisions read as follows:

§1.1474-1 Liability for withheld tax and withholding agent reporting.

(a) * * *

(2) Withholding agent liability. A withholding agent that is required to withhold with respect to a payment under §1.1471-2(a), 1.1471-4(b) (in the case of a participating FFI), or 1.1472-1(b) but fails either to withhold or to deposit any tax withheld as required under paragraph (b) of this section is liable for the amount of tax not withheld and deposited.

* * * * *

(b) * * *

(1) * * * Except as otherwise provided in this paragraph (b), every withholding agent who withholds tax pursuant to chapter 4 shall deposit such tax within the time provided in §1.6302-2(a) by electronic funds transfer as provided under §31.6302-1(h) of this chapter. * * *

* * * * *

(d) * * *

(4) * * *

(i) * * *

(B) * * * With respect to a payment of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT or QI that elects to be withheld upon under section 1471(b)(3) and from whom the withholding agent receives pooled information regarding such FFI's account holders and payees, a U.S. withholding agent must complete a separate Form 1042-S issued to

the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each pool provided in an FFI withholding statement described in §1.1471-3(c)(3)(iii)(B)(2). * * * See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs or deemed-compliant FFIs provide specific payee information for reporting to the recipient of the payment for Form 1042-S reporting purposes. * * *

(C) * * *

(1) If the U.S. branch is treated as a U.S. person, if the withholding agent treats amounts paid as effectively connected with the conduct of the branch's trade or business in the United States, or if the U.S. branch is the beneficial owner of the payment, the withholding agent must file Form 1042-S reporting the U.S. branch as the recipient;

* * * * *

(ii) * * *

(C) * * * If a U.S. withholding agent makes a payment to a disregarded entity and receives a valid withholding certificate or other documentary evidence from the person that is the single owner of such disregarded entity, the withholding agent must file a Form 1042-S treating the single owner as the recipient. * * *

(iii) * * *

(A) * * * Except as otherwise provided in paragraphs (d)(4)(iii)(B) (relating to NQIs, NWPs, NWTs, and FFIs electing under section 1471(b)(3)) and (d)(4)(iii)(C) of this section (relating to transitional payee-specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP,

WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) that makes a payment that is a chapter 4 reportable amount to a recalcitrant account holder or nonparticipating FFI, must complete a Form 1042-S to report such payments. A participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may report in pools consisting of its recalcitrant account holders and payees that are nonparticipating FFIs. * * * Alternatively, a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may (and a certified deemed-compliant FFI is required to) perform payee-specific reporting to report a chapter 4 reportable amount made to a recalcitrant account holder or a nonparticipating FFI when withholding was applied (or should have applied) to the payment.

(B) * * * Except as otherwise provided in paragraph (d)(4)(iii)(C) of this section, a participating FFI or deemed-compliant FFI that is an NQI, NWP, NWT (including a U.S. branch of a participating FFI that is not treated as a U.S. person), or an FFI that has made an election under section 1471(b)(3) and has provided sufficient information to its withholding agent to withhold and report the payment is not required to report the payment on Form 10420S as described in paragraph (d)(4)(iii)(A) of this section if the payment is made to a nonparticipating FFI or recalcitrant account holding and its withholding agent has withheld the correct amount of tax on such payment and correctly reported the payment on a Form 1042-S. * * *

(C) Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, and WTs) for certain payments made to nonparticipating FFIs

(transitional). Except as otherwise provided in the instructions to Form 1042-S or under a Model 2 IGA, if a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) makes a payment to a nonparticipating FFI of a foreign reportable amount as defined in paragraph (d)(2)(i)(D) of this section, the FFI must report on Form 1042-S on a payee-specific basis the aggregate amount of all foreign reportable amounts paid by the FFI to the nonparticipating FFI for each of the calendar years 2015 and 2016.

* * * * *

(i) * * *

(1) * * * Beginning in calendar year 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under §1.1471-4(d)) makes during a calendar year a withholdable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under §1.1471-3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person identified under §1.1471-3(d)(6)(iv)(A)(1) or (2). * * *

* * * * *

(ii) The name, address, and TIN of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1) and (2);

(iii) The total of all withholdable payments made to the owner-documented FFI;

* * * * *

(2) * * *

(iii) The total of all withholdable payments made to the NFFE; and

* * * * *

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