AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



activity and balance information and other correspondence to the payee.

[T.D. 7929, 48 FR 56332, Dec. 20, 1983, as amended by T.D. 7933, 49 FR 63, Jan. 3, 1984; T.D. 7966, 49 FR 33236, Aug. 22, 1984; T.D. 8163, 52 FR 44874, Nov. 23, 1987; T.D. 8248, 54 FR 14351, Apr. 11, 1989]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53494, Oct. 14, 1997, §35a.9999–3 was removed, effective Jan. 1, 1999. At 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

### §35a.9999–3A Question and answer relating to exemption from backup withholding for certain principal payments made outside the United States by brokers on certain obligations.

The following question and answer concerns the exemption from information reporting and backup withholding for certain principal payments on obligations made outside the United States. The question and answer is issued under the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369):

*Q. Are payments of principal on obligations subject to information reporting under section 6045 or to backup withholding if made outside the United States?*

*A.* Such payments are not subject to section 6045 information reporting or backup withholding if made with respect to obligations the interest on which would be from sources outside the United States. The determination of whether a payment of principal is made outside the United States for this purpose shall be determined under rules similar to those contained in A–37 of §35a.9999–3 of the regulations.

[T.D. 7946, 49 FR 7227, Feb. 28, 1984]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53494, Oct. 14, 1997, §35a.9999–3A was removed, effective Jan. 1, 1999. At 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

### §35a.9999–4T Questions and answers relating to the application of information reporting and backup withholding to payments by foreign offices of United States and foreign brokers and by United States offices of banks and brokers, and other related matters (temporary).

The following questions and answers concern the application of information reporting and backup withholding to payments by foreign offices of United States and foreign brokers and by United States offices of banks and brokers, and other related matters. These questions and answers are issued under the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369):

*Q–1. Was a foreign office of a U.S. broker required to commence backup withholding on July 1, 1984, with respect to transactions effected by that office for a foreign customer who has not provided the broker with the penalty of perjury statement described in §1.6045–1(g)(1) of the regulations?*

*A–1.* Although it has not received a statement described in §1.6045–1(g)(1), a foreign office of a U.S. broker may treat a cusotmer as an exempt foreign person with respect to a transaction effected by that office for that customer if, in the case of both pre-1984 and post-1983 brokerage accounts, the broker has evidence in its records that the customer is a foreign person (provided the broker does not have actual knowledge that the evidence is false, the customer does not, except in infrequent and isolated circumstances, transmit instructions to the foreign office from within the United States, by mail, telephone, electronic transfer or otherwise, and the customer has not opened an account with a United States office of the broker). Such evidence may include a written indication from the customer (e.g., appearing on an account application form) that the customer is neither a citizen nor a resident of the United States. The mere fact, however that the customer has provided an address outside the United States is insufficent evidence to establish for this purpose

that the customer is neither a citizen nor a resident of the United States. For payments made on or before November 20, 1984 on brokerage accounts opened on or before August 22, 1984, an affidavit by an employee of the broker stating that the employee knows, or that the customer has represented orally, that the customer is not a U.S. person will be sufficient to establish such foreign status. For all other payments on brokerage accounts, the employee's affidavit will be sufficient to estblish the customer's foreign status only if the affidavit states that the employee has a reasonable basis, founded on documentary evidence, for believing that the cusomter is neither a citizen nor a resident of the United States.

A foreign office of a U.S. broker may also treat a customer as an exempt foreign person with respect to payments made outside the United States on a transaction effected by that office on behalf of that customer if any one of the following conditions is satisfied: (i) During the 12-month period immediately preceding the transaction, the broker has withheld tax on any amount, including interest and dividends, paid to such person under subchapter A of chapter 3 of the Code in accordance with the provisions of chapter 3; (ii) during the 12-month period immediately preceding the transaction another payor or middleman has withheld tax under subchapter A of chapter 3 of the Code in accordance with the provisions of chapter 3 on any amount, including interest and dividends, collected by the broker on behalf of the customer; or (iii) the broker, in accordance with §1.1441–6 (b) or (c) of the regulations, has received from the customer a Form 1001 (Ownership, Exemption or Reduced Rate Certificate) or special variation thereof that is in effect with respect to any amount, inlcuding interest, that is or may be paid to the customer during the calendar year in which the transaction is effected. (Notwithstanding the foregoing, the Internal Revenue Service is reconsidering the question of whether a broker should be permitted to treat a customer as an exempt foreign person for purposes of either information reporting or backup withholding merely by virtue of the fact that the broker or another person withheld tax under subchapter A of chapter 3 of the Code on any amount collected by the broker on behalf of the customer; any change in this rule will be announced in future regulations and will apply prospectively only).

If the broker does not obtain the statement described in §1.6045–1(g)(1) and does not otherwise establish in accordance with any of the foregoing procedures that a customer is not a U.S. citizen or resident, the information reporting provisions of section 6045 will apply. However, the issue of whether backup withholding should apply with respect to transactions effected by a foreign office of a U.S. broker, as well as the issue of the standard of evidence required to prove foreign status for information reporting purposes, is still under consideration. Until provided otherwise, backup withholding shall not apply with respect to such transactions. If backup withholding is subsequently determined to be appropriate, or the circumstances in which information reporting is required are changed, such will be provided in future regulations, and such changes will apply on a prospective basis only.

*Q–2. Are payments made with respect to transactions effected for a U.S. customer of a foreign office of a foreign broker reportable payments under section 6045 that may be subject to backup withholding?*

*A–2.* A payment made with respect to a transaction effected for a U.S. customer by a foreign office of a foreign broker is subject to information reporting under section 6045 only in the following circumstances: (i) The foreign broker is a controlled foreign corporation within the meaning of section 957(a); or (ii) 50 percent or more of the gross income of the foreign broker from all sources for the 3-year period ending with the close of its taxable year preceding the payment (or for such part of the period that the foreign broker has been in existence) was effectively connected with the conduct of a trade or business within the United States.

For purposes of determining whether a customer is an exempt foreign person, the foreign office of a foreign broker may use the same procedures as used by a foreign office of a U.S.

broker. If the foreign broker does not obtain the statement described in §1.6045–1(g)(1) and does not otherwise establish in accordance with those procedures that a customer is not a U.S. citizen or resident, the information reporting provisions of section 6045 will apply. However, as in the case of foreign offices of United States brokers, the issue of whether backup withholding should be applied with respect to such foreign offices, as well as the issue of the standard of evidence required to prove foreign status for information reporting purposes, is still under consideration. If backup withholding is subsequently determined to be appropriate, or the circumstances in which information reporting is required are changed, such will be provided in future regulations, and such changes will apply on a prospective basis only.

*Q–3. Was a U.S. office of a bank or a broker required to commence backup withholding on July 1, 1984, with respect to the pre-1984 account of a foreign payee or customer (other than a payee or customer who may be treated as an exempt recipient) if the bank or broker has not received a taxpayer identification number or the penalty of perjury statement described in §1.6049–5(b)(2)(iv) or §1.6045–1(g)(1) from that payee or customer?*

*A–3.* The bank or broker is not required to commence backup withholding with respect to the pre-1984 account of a foreign payee or customer until January 1, 1985, provided, however, that the following conditions are satisfied: (i) The bank or broker has otherwise complied with the requirements of A–52 or A–55 of §35a.9999–1 of the regulations and (ii) the bank or broker sends an additional mailing (which need not be a separate mailing) during calendar year 1984 requesting the payee or customer to provide the requisite statement signed under penalties of perjury. The additional mailing must be by first-class mail, or by airmail if sent to a foreign address, and must contain a notice describing the requisite statement and advising the payee or customer that backup withholding may commence if the statement is not provided. The mailing must include a reply envelope and a form on which the payee or customer may provide the requisite statement. However, no further mailing is required by this A–3 after the bank or broker has received the statement signed by the payee or customer under penalties of perjury. The rules of A–18 of §35a.9999–1 relating to persons for whom the payor has no correct address, the rules of A–19 of §35a.9999–1 relating to ''do not mail'' or ''stop mail hold'' instructions, and the rules of A–52 of §35a.9999–3 relating to the delivery of mailings shall apply with respect to the mailings required by this A–3.

Backup withholding must commence with respect to payments on pre-1984 accounts of foreign payees or customers on or after January 1, 1985, if the bank or broker has received neither a taxpayer identification number nor a statement described in §1.6049–5(b)(2)(iv) or §1.6045–1(g)(1) from the foreign payee or customer.

*Q–4. Do the backup withholding provisions apply to a payment in redemption or retirement of an obligation issued by an international organization if the payment is made within the United States by the international organization or by a person acting in its capacity as a paying agent for such organization?*

*A–4.* No, provided the international organization is an organization of which the United States is a member and which enjoys immunity or exemption from any liability or obligation to pay, withhold, or collect tax pursuant to an international agreement having full force and effect in the United States.

*Q–5. For purposes of the regulations under §35a.9999–5, under what circumstances is a custodian, nominee or other agent of a payee subject to information reporting or backup withholding with respect to interest or original issue discount paid or collected outside the United States?*

*A–5.* (i) The provisions of Q&A's 2, 3, 4, 5, 6, and 16 of §35a.9999–5 indicate that the payment or collection outside the United States of interest or original issue discount on obligations described therein by a person acting as a custodian, nominee or other agent of the payee with respect to those obligations may be subject to information reporting under section 6049 unless the

payee is an exempt recipient or a foreign person.

(ii) For purposes of the provisions described in subdivision (i), a payment or collection of interest or original issue discount outside the United States by a person acting in its capacity as a custodian, nominee or other agent of the payee with respect to such payment or collection is not subject to information reporting under section 6049 by that agent unless the agent is either (A) a United States person, (B) a controlled foreign corporation within the meaning of section 957(a), or (C) a foreign person 50 percent or more of the gross income of which from all sources for the 3-year period ending with the close of its taxable year preceding the collection or payment was effectively connected with its conduct of a trade or business within the United States.

(iii) For purposes of section 6049 and the regulations under §35a.9999–5, an agent (described in subdivision (ii)) of the payee paying or collecting interest or original issue discount outside the United States with respect to an obligation described in §35a.9999–5 may treat the payee as a person who is not a United States citizen or resident if the agent has evidence in its records to such effect (provided it does not have actual knowledge that the evidence is false). Such evidence may include a written indication from the payee (*e.g.*, appearing on an account application form) that the payee is neither a citizen nor a resident of the United States. The mere fact, however, that the payee has provided an address outside the United States is insufficient evidence to establish for this purpose that the payee is neither a citizen nor a resident of the United States. For payments made on or before November 20, 1984, on accounts opened on or before August 22, 1984, an affidavit by an employee of the agent stating that the employee knows, or the payee has represented orally, that the payee is not a U.S. person will be sufficient to establish such foreign status. For all other payments, an affidavit of an employee will be sufficient to establish the foreign status of the payee only if the affidavit states that the employee has a reasonable basis, founded on documentary evidence, for believing that the payee is neither a citizen nor a resident of the United States. (Notwithstanding the foregoing, the issue of the standard of evidence required to prove foreign status for information reporting purposes is still under consideration; any change in such standard would be made in future regulations and would apply on a prospective basis only.)

(iv) Payments described in this Q&A–5 are not subject to information reporting by a custodian, nominee or other agent of the payee under section 6041, if they are exempt from reporting under section 6049. In addition, although payments outside the United States of interest or original issue discount described in this Q&A–5 may be reportable payments as, for example, payments made by foreign offices of U.S. persons to U.S. persons, these payments are not subject currently to backup withholding by the custodian, nominee or other agent of the payee. (However, the issue of whether backup withholding should apply in this case is still under consideration; any change with respect to backup withholding in this regard would be made in future regulations and would apply on a prospective basis only.)

(v) For purposes of Q&A–7 and Q&A–17 of §35a.9999–5, the question of whether a broker is otherwise subject to information reporting under section 6045 shall be determined in accordance with the provisions of Q&A–1 and Q&A–2 of this §35a.9999–4.

[T.D. 7966, 49 FR 33237, Aug. 22, 1984, as amended by T.D. 7972, 49 FR 34340, Aug. 29, 1984]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53494, Oct. 14, 1997, §35a.9999–4T was removed, effective Jan. 1, 1999. At 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

### § 35a.9999–5 Questions and answers relating to repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.

The following questions and answers concern the repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and the application of