

Internal Revenue Service, Treasury

§ 1.1471-1

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§ 1.1471-1 Scope of chapter 4 and definitions.

(a) *Scope of chapter 4 of the Internal Revenue Code.* Sections 1.1471-1 through 1.1474-7 provide rules for withholding when a withholding agent makes a payment to an FFI or NFFE and prescribe the requirements for and definitions relevant to FFIs and NFFEs to which withholding will not apply. Section 1.1471-1 provides definitions for terms used in chapter 4 of the Internal Revenue Code (Code) and the regulations thereunder. Section 1.1471-2 provides rules for withholding under section 1471(a) on payments to FFIs, including the exception from withholding for payments made with respect to certain grandfathered obligations. Section 1.1471-3 provides rules for determining the payee of a payment and the documentation requirements to establish a payee's chapter 4 status. Section 1.1471-4 describes the requirements of an FFI agreement under section 1471(b) and the application of sections 1471(b) and (c) to an expanded affiliated group of FFIs. Section 1.1471-5 defines terms relevant to section 1471 and the FFI agreement and defines categories of FFIs that will be deemed to have met the requirements of section 1471(b) pursuant to section 1471(b)(2). Section 1.1471-6 defines classes of beneficial owners of payments that are exempt from withholding under chapter 4. Section 1.1472-1 provides rules for withholding when a withholding agent makes a payment to an NFFE, and defines categories of NFFEs that are not

subject to withholding. Section 1.1473-1 provides definitions of the statutory terms in section 1473. Section 1.1474-1 provides rules relating to a withholding agent's liability for withheld tax, filing of income tax and information returns, and depositing of tax withheld. Section 1.1474-2 provides rules relating to adjustments for overwithholding and underwithholding of tax. Section 1.1474-3 provides the circumstances in which a credit is allowed to a beneficial owner for a withheld tax. Section 1.1474-4 provides that a chapter 4 withholding obligation need only be collected once. Section 1.1474-5 contains rules relating to credits and refunds of tax withheld. Section 1.1474-6 provides rules coordinating withholding under sections 1471 and 1472 with withholding provisions under other sections of the Code. Section 1.1474-7 provides the confidentiality requirement for information obtained to comply with the requirements of chapter 4. Any reference in the provisions of sections 1471 through 1474 to an amount that is stated in U.S. dollars includes the foreign currency equivalent of that amount. Except as otherwise provided, the provisions of sections 1471 through 1474 and the regulations thereunder apply only for purposes of chapter 4. See § 301.1474-1 of this chapter for the requirements for reporting on magnetic media that apply to financial institutions making payments or otherwise reporting accounts pursuant to chapter 4.

(b) *Definitions.* Except as otherwise provided in this paragraph (b) or under the terms of an applicable Model 2 IGA, the following definitions apply for purposes of sections 1471 through 1474 and the regulations under those sections.

(1) *Account.* The term *account* means a financial account as defined in § 1.1471-5(b).

(2) *Account holder.* The term *account holder* means the person who holds an account, as determined under § 1.1471-5(a)(3).

(3) *Active NFFE.* The term *active NFFE* has the meaning set forth in § 1.1472-1(c)(1)(iv).

(4) *AML due diligence.* The term *AML due diligence* means the customer due diligence procedures of a financial institution pursuant to the anti-money

laundering or similar requirements to which the financial institution, or branch thereof, is subject. This includes identifying the customer (including the owners of the customer), understanding the nature and purpose of the account, and ongoing monitoring.

(5) *Annuity contract.* The term *annuity contract* means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an annuity contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years. For purposes of the preceding sentence, it is immaterial whether a contract satisfies any of the substantive U.S. tax rules (for example, sections 72(s), 72(u), 817(h), and the investor control prohibition) applicable to the taxation of a contract holder or issuer.

(6) *Assumes primary withholding responsibility.* The term *assumes primary withholding responsibility* means that a QI, territory financial institution, or U.S. branch of a participating FFI or registered deemed-compliant FFI that assumes responsibility for withholding on a payment for purposes of chapters 3 and 4 as if it were a U.S. person. A QI may only assume primary withholding responsibility if it does not make an election to be withheld upon with respect to the payment.

(7) *Beneficial owner.* Except as provided in § 1.1472-1(d), § 1.1471-6(d)(4), and § 1.1471-6(f), the term *beneficial owner* has the meaning set forth in § 1.1441-1(c)(6).

(8) *Blocked account.* The term *blocked account* has the meaning set forth in § 1.1471-4(e)(2)(iii)(B).

(9) *Broker.* The term *broker* means any person, U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. Examples of a broker include an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, and a clearing organization that effects

sales of securities for its members. A broker does not include an international organization described in § 1.1471-6(c) that redeems or retires an obligation of which it is the issuer, a stock transfer agent that records transfers of stock for a corporation if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales, an escrow agent that effects no sales other than transactions incidental to the purpose of the escrow (such as sales to collect on collateral), or a corporation that issues and retires long-term debt on an irregular basis.

(10) *Cash value.* The term *cash value* has the meaning set forth in § 1.1471-5(b)(3)(vii)(B).

(11) *Cash value insurance contract.* The term *cash value insurance contract* has the meaning set forth in § 1.1471-5(b)(3)(vii).

(12) *Certified deemed-compliant FFI.* The term *certified deemed-compliant FFI* means an FFI described in § 1.1471-5(f)(2).

(13) *Change in circumstances.* The term *change in circumstances* has the meaning set forth in § 1.1471-3(c)(6)(ii)(E) for withholding agents and, in the case of a participating FFI, has the meaning set forth in § 1.1471-4(c)(2)(iii).

(14) *Chapter 3.* For purposes of chapter 4, the term *chapter 3* means sections 1441 through 1464 and the regulations thereunder, but does not include sections 1445 and 1446 and the regulations thereunder, unless the context indicates otherwise.

(15) *Chapter 4.* The term *chapter 4* means sections 1471 through 1474 and the regulations thereunder.

(16) *Chapter 4 reportable amount.* The term *chapter 4 reportable amount* has the meaning set forth in § 1.1474-1(d)(2)(i).

(17) *Chapter 4 status.* The term *chapter 4 status* means a person's status as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE, or a passive NFFE.

(18) *Clearing organization.* The term *clearing organization* means an entity

that is in the business of holding securities for its member organizations or clearing trades of securities and transferring, or instructing the transfer of, securities by credit or debit to the account of a member without the necessity of physical delivery of the securities.

(19) *Complex trust.* A *complex trust* is a trust that is not a simple trust or a grantor trust.

(20) *Consolidated obligations.* The term *consolidated obligations* means multiple obligations that a withholding agent (including a withholding agent that is an FFI) has chosen to treat as a single obligation in order to treat the obligations as preexisting obligations pursuant to paragraph (b)(98)(ii) of this section or in order to share documentation between the obligations pursuant to § 1.1471-3(c)(8). A withholding agent that has opted to treat multiple obligations as consolidated obligations pursuant to the previous sentence must also treat the obligations as a single obligation for purposes of satisfying the standards of knowledge requirements set forth in §§ 1.1471-3(e) and 1.1471-4(c)(2)(ii), and for purposes of determining the balance or value of any of the obligations when applying any of the account thresholds applicable to due diligence or reporting as set forth in §§ 1.1471-3(c)(6)(ii), 1.1471-3(d), 1.1471-4(c), 1.1471-5(a)(4), and 1.1471-5(b)(3)(vii). For example, with respect to consolidated obligations, if a withholding agent has reason to know that the chapter 4 status assigned to the account holder or payee of one of the consolidated obligations is inaccurate, then it has reason to know that the chapter 4 status assigned for all other consolidated obligations of the account holder or payee is inaccurate. Similarly, to the extent that an account balance or value is relevant for purposes of applying any account threshold to one or more of the consolidated obligations, the withholding agent must aggregate the balance or value of all such consolidated obligations.

(21) *Custodial account.* The term *custodial account* has the meaning set forth in § 1.1471-5(b)(3)(ii).

(22) *Custodial institution.* The term *custodial institution* has the meaning set forth in § 1.1471-5(e)(1)(ii).

(23) *Customer master file.* A *customer master file* includes the primary files of a 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.

(24) *Deemed-compliant FFI.* The term *deemed-compliant FFI* means an FFI that is treated, pursuant to section 1471(b)(2) and § 1.1471-5(f), as meeting the requirements of section 1471(b). The term *deemed-compliant FFI* also includes a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.

(25) *Deferred annuity contract.* The term *deferred annuity contract* means an annuity contract other than an immediate annuity contract.

(26) *Depository account.* The term *depository account* has the meaning set forth in § 1.1471-5(b)(3)(i).

(27) *Depository institution.* The term *depository institution* has the meaning set forth in § 1.1471-5(e)(1)(i).

(28) *Documentary evidence.* The term *documentary evidence* means documents, other than a withholding certificate or written statement, that a withholding agent is permitted to rely upon to determine the chapter 4 status of a person in accordance with § 1.1471-3(c)(5).

(29) *Documentation.* The term *documentation* means withholding certificates, written statements, documentary evidence, and other documents that may be relevant in determining a person's chapter 4 status, including any document containing a determination of the account holder's citizenship or residency for tax or AML due diligence purposes or an account holder's claim of citizenship or residency for tax or AML due diligence purposes.

(30) *Dormant account.* The term *dormant account* has the meaning set forth in § 1.1471-4(d)(6)(ii).

(31) *Effective date of the FFI agreement.* The term *effective date of the FFI agreement* means the date on which the IRS issues a GIIN to the participating FFI. For participating FFIs that receive a GIIN prior to December 31, 2013, the effective date of the FFI agreement is December 31, 2013.

(32) *EIN.* The term *EIN* means an employer identification number (also known as a federal tax identification

number) described in § 301.6109-1(a)(1)(i) of this chapter.

(33) *Election to be withheld upon.* The term *election to be withheld upon* has the meaning set forth in § 1.1471-2(a)(2)(iii).

(34) *Electronically searchable information.* The term *electronically searchable information* means information that an 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. Information, data, or files are not electronically searchable merely because they are stored in an image retrieval system (such as portable document format (.pdf) or scanned documents).

(35) *Entity.* The term *entity* means any person other than an individual.

(36) *Entity account.* The term *entity account* means an account held by one or more entities.

(37) *Excepted NFFE.* The term *excepted NFFE* means an NFFE that is described in § 1.1472-1(c)(1).

(38) *Exempt beneficial owner.* The term *exempt beneficial owner* means any person described in § 1.1471-6(b) through (g) or that is otherwise treated as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA.

(39) *Expanded affiliated group.* The term *expanded affiliated group* has the meaning set forth in § 1.1471-5(i)(2).

(40) *FATF.* The term *FATF* means the Financial Action Task Force, an inter-governmental body that develops and promotes international policies to combat money laundering and terrorist financing.

(41) *FATF-compliant jurisdiction.* The term *FATF-compliant jurisdiction* means a jurisdiction that—

(i) Is not subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risks emanating from the jurisdiction;

(ii) Is not a jurisdiction with strategic AML/CFT (anti-money laundering and combating the financing of terrorism) deficiencies that has not made sufficient progress in addressing

the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies; and

(iii) Is not a jurisdiction with strategic AML/CFT deficiencies that the FATF has identified as not making sufficient progress on its action plan agreed upon with the FATF.

(42) *FFI.* The term *FFI* or *foreign financial institution* has the meaning set forth in § 1.1471-5(d).

(43) *FFI agreement.* The term *FFI agreement* means an agreement that is described in § 1.1471-4(a). An FFI agreement includes a QI agreement, a withholding partnership agreement, and a withholding trust agreement that is entered into by an FFI (other than an FFI that is a registered deemed-compliant FFI, including a reporting Model 1 FFI) and that has an effective date or renewal date on or after December 31, 2013. The term *FFI agreement* also includes a QI agreement that is entered into by a foreign branch of a U.S. financial institution (other than a branch that is a reporting Model 1 FFI) and that has an effective date or renewal date on or after December 31, 2013.

(44) *Financial account.* The term *financial account* has the meaning set forth in § 1.1471-5(b).

(45) *Financial institution.* The term *financial institution* has the meaning set forth in § 1.1471-5(e).

(46) *Flow-through entity.* The term *flow-through entity* means a partnership, simple trust, or grantor trust, as determined under U.S. tax principles.

(47) *Flow-through withholding certificate.* The term *flow-through withholding certificate* means a Form W-8IMY submitted by a foreign partnership, foreign simple trust, or foreign grantor trust.

(48) *Foreign entity.* The term *foreign entity* has the meaning set forth in § 1.1473-1(e).

(49) *Foreign passthru payment.* The term *foreign passthru payment* has the meaning set forth in § 1.1471-5(h)(2).

(50) *Foreign payee.* The term *foreign payee* means any payee other than a U.S. payee.

(51) *Foreign person.* The term *foreign person* means any person other than a U.S. person and includes a QI branch of a U.S. financial institution.

(52) *GIIN*. The term *GIIN* or *Global Intermediary Identification Number* means the identification number that is assigned to a participating FFI or registered deemed-compliant FFI. The term *GIIN* or *Global Intermediary Identification Number* also includes the identification number assigned to a reporting Model 1 FFI for purposes of identifying such entity to withholding agents. All GIINs will appear on the IRS FFI list.

(53) *Grandfathered obligation*. The term *grandfathered obligation* has the meaning set forth in § 1.1471-2(b).

(54) *Grantor trust*. A *grantor trust* is a trust with respect to which one or more persons are treated as owners of all or a portion of the trust under sections 671 through 679. If only a portion of the trust is treated as owned by a person, that portion is a grantor trust with respect to that person.

(55) *Gross proceeds*. The term *gross proceeds* has the meaning set forth in § 1.1473-1(a)(3).

(56) *Group annuity contract*. The term *group annuity contract* means an annuity contract under which the obligees are individuals who are affiliated through an employer, trade association, labor union, or other association or group.

(57) *Group insurance contract*. The term *group insurance contract* means an insurance contract that—

(i) Provides coverage on individuals who are affiliated through an employer, trade association, labor union, or other association or group; and

(ii) Charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

(58) *Immediate annuity*. The term *immediate annuity* means an annuity contract that—

(i) Is purchased with a single premium or annuity consideration; and

(ii) No later than one year from the purchase date of the contract commences to pay annually or more frequently substantially equal periodic payments.

(59) *Individual account*. The term *individual account* means an account held by one or more individuals.

(60) *Insurance company*. The term *insurance company* means an entity or arrangement—

(i) That is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business;

(ii) The gross income of which (for example, gross premiums and gross investment income) arising from insurance, reinsurance, and annuity contracts for the immediately preceding calendar year exceeds 50 percent of total gross income for such year; or

(iii) The aggregate value of the assets of which associated with insurance, reinsurance, and annuity contracts at any time during the immediately preceding calendar year exceeds 50 percent of total assets at any time during such year.

(61) *Insurance contract*. The term *insurance contract* means a contract (other than an annuity contract) under which the issuer in exchange for consideration agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

(62) *Intermediary*. The term *intermediary* has the meaning set forth in § 1.1441-1(c)(13).

(63) *Intermediary withholding certificate*. The term *intermediary withholding certificate* means a Form W-8IMY submitted by an intermediary.

(64) *Investment entity*. The term *investment entity* has the meaning set forth in § 1.1471-5(e)(1)(iii).

(65) *Investment-linked annuity contract*. The term *investment-linked annuity contract* means an annuity contract under which benefits or premiums are adjusted to reflect the investment return or market value of assets associated with the contract.

(66) *Investment-linked insurance contract*. The term *investment-linked insurance contract* means an insurance contract under which benefits, premiums, or the period of coverage are adjusted to reflect the investment return or market value of assets associated with the contract.

(67) *IRS FFI list*. The term *IRS FFI list* means the list published by the IRS that contains the names and GIINs for all participating FFIs, registered deemed-compliant FFIs, and reporting Model 1 FFIs.

(68) *Life annuity contract*. The term *life annuity contract* means an annuity contract that provides for payments over the life or lives of one or more individuals.

(69) *Life insurance contract*. The term *life insurance contract* means an insurance contract under which the issuer, in exchange for consideration, agrees to pay an amount upon the death of one or more individuals. That a contract provides one or more payments (for example, for endowment benefits or disability benefits) in addition to a death benefit will not cause the contract to be other than a life insurance contract. For purposes of the preceding sentence, it is immaterial whether a contract satisfies any of the substantive U.S. tax rules (for example, sections 101(f), 817(h), 7702, or investor control prohibition) applicable to the taxation of the contract holder or issuer.

(70) *Limited branch*. The term *limited branch* has the meaning set forth in § 1.1471-4(e)(2)(iii).

(71) *Limited FFI*. The term *limited FFI* has the meaning set forth in § 1.1471-4(e)(3)(ii).

(72) *Model 1 IGA*. The term *Model 1 IGA* means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to implement FATCA through reporting by financial institutions to such foreign government or agency thereof, followed by automatic exchange of the reported information with the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 1 IGA.

(73) *Model 2 IGA*. The term *Model 2 IGA* means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by financial institutions directly to the IRS in accordance with the requirements of

an FFI agreement, supplemented by the exchange of information between such foreign government or agency thereof and the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 2 IGA.

(74) *NFFE*. The term *NFFE* or *non-financial foreign entity* means a foreign entity that is not a financial institution (including a territory NFFE). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.

(75) *Nonparticipating FFI*. The term *nonparticipating FFI* means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

(76) *Nonreporting IGA FFI*. The term *nonreporting IGA FFI* means an FFI that is identified as a nonreporting financial institution pursuant to a Model 1 IGA or Model 2 IGA that is not a registered deemed-compliant FFI.

(77) *Non-U.S. account*. The term *non-U.S. account* means an account that is not a U.S. account and that does not have an account holder that is a nonparticipating FFI or recalcitrant account holder.

(78) *NQI*. The term *NQI* or *non-qualified intermediary* has the meaning set forth in § 1.1441-1(c)(14).

(79) *NWP*. The term *NWP* or *nonwithholding foreign partnership* means a foreign partnership that is not a withholding foreign partnership.

(80) *NWT*. The term *NWT* or *nonwithholding foreign trust* means a foreign trust as defined in section 7701(a)(31)(B) that is a simple trust or grantor trust and is not a withholding foreign trust.

(81) *Offshore account*. The term *offshore account* means an account that is an offshore obligation, all payments to which are made outside of the United States, within the meaning of § 1.6049-5(e).

(82) *Offshore obligation*. The term *offshore obligation* means any account, instrument, or contract that is maintained and executed at an office or branch of the withholding agent at any location outside of the United States or in any location in a U.S. territory. The term also includes any equity interest in a foreign entity that is purchased by the owner of such interest

outside of the United States either directly from the entity or from another person that is located outside of the United States.

(83) *Owner*. The term *owner* means a person described in § 1.1473-1(b)(1), without regard to whether such person is a U.S. person and without regard to whether such person owns a ten percent interest in the entity. The term also includes a person that owns a discretionary interest in a trust and receives a distribution during the calendar year.

(84) *Owner-documented FFI*. The term *owner-documented FFI* means an FFI described in § 1.1471-5(f)(3).

(85) *Participating FFI*. The term *participating FFI* means an FFI that has agreed to comply with the requirements of an FFI agreement, including an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI agreement. The term *participating FFI* also includes a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

(86) *Participating FFI group*. The term *participating FFI group* means an expanded affiliated group that includes one or more participating FFIs and meets the requirements of § 1.1471-4(e)(1). The term *participating FFI group* also means an expanded affiliated group in which one or more members of the group is a reporting Model 1 FFI and each member of the group that is an FFI is a registered deemed-compliant FFI, nonreporting IGA FFI, limited FFI, or retirement fund described in § 1.1471-6(f).

(87) *Partnership*. The term *partnership* has the meaning set forth in § 301.7701-2(c)(1) of this chapter.

(88) *Passive NFFE*. The term *passive NFFE* means an NFFE other than an excepted NFFE.

(89) *Passthru payment*. The term *passthru payment* has the meaning set forth in § 1.1471-5(h).

(90) *Payee*. The term *payee* has the meaning set forth in § 1.1471-3(a).

(91) *Payment with respect to an offshore obligation*. The term *payment with respect to an offshore obligation* means a payment made outside of the United States, within the meaning of § 1.6049-

5(e), with respect to an offshore obligation.

(92) *Payor*. The term *payor* has the meaning set forth in §§ 31.3406(a)-2 of this chapter and 1.6049-(a)(2) and generally includes a withholding agent.

(93) *Permanent residence address*. The term *permanent residence address* is the address in the country of which the person claims to be a resident for purposes of that country's income tax. The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a permanent residence address unless such address is the only permanent address used by the person and appears as the person's registered address in the person's organizational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not a permanent residence address. If the person is an individual who does not have a tax residence in any country, the permanent address is the place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address is the place at which the person maintains its principal office.

(94) *Person*. The term *person* has the meaning set forth in section 7701(a)(1) and the regulations thereunder, and also includes an entity or arrangement that is an insurance company. The term *person* does not include a wholly owned entity that is disregarded for federal tax purposes as an entity separate from its owner. Notwithstanding the previous sentence, the term *person* includes, with respect to a withholdable payment, a QI branch of a U.S. financial institution.

(95) *Preexisting account*. The term *preexisting account* means a financial account that is a preexisting obligation.

(96) *Preexisting entity account*. The term *preexisting entity account* means a preexisting account held by one or more entities.

(97) *Preexisting individual account*. The term *preexisting individual account* means a preexisting account held by one or more individuals.

(98) *Preexisting obligation*—(i) The term *preexisting obligation* means any

account, instrument, contract, debt, or equity interest maintained, executed, or issued by the withholding agent that is outstanding on December 31, 2013. With respect to a withholding agent that is a participating FFI, the term *preexisting obligation* means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the FFI that is outstanding on the effective date of the FFI agreement. With respect to a withholding agent that is a registered deemed-compliant FFI, a *preexisting obligation* means any account, instrument, or contract (including any debt or equity interest) that is maintained, executed, or issued by the FFI prior to the later of the date that the FFI registers as a deemed-compliant FFI pursuant to § 1.1471-5(f)(1) and receives a GIIN or the date the FFI is required to implement its account opening procedures under § 1.1471-5(f).

(ii) The term *preexisting obligation* also includes any obligation (referring to an account, instrument, contract, debt, or equity interest) of an account holder or payee, regardless of the date such obligation was entered into, if—

(A) The account holder or payee also holds with the withholding agent (or a member of the withholding agent's expanded affiliated group or sponsored FFI group) an account, instrument, contract, or equity interest that is a preexisting obligation under paragraph (b)(98)(i) of this section;

(B) The withholding agent (and, as applicable, the member of the withholding agent's expanded affiliated group or sponsored FFI group) treats both of the aforementioned obligations, and any other obligations of the payee or account holder that are treated as preexisting obligations under this paragraph (b)(98)(ii), as consolidated obligations; and

(C) With respect to an obligation that is subject to AML due diligence, the withholding agent is permitted to satisfy such AML due diligence for the obligation by relying upon the AML due diligence performed for the preexisting obligation described in paragraph (b)(96)(i) of this section.

(99) *Pre-FATCA Form W-8*. The term *pre-FATCA Form W-8* means a version of a Form W-8 (or a substitute form)

that was issued prior to 2013 and that does not contain chapter 4 statuses but otherwise meets the requirements of § 1.1441-1(e)(1)(ii) applicable to such certificate and has not expired.

(100) *Prima facie FFI*. The term *prima facie FFI* means an entity described in § 1.1471-2(a)(4)(ii)(B).

(101) *QI*. The term *QI* or *qualified intermediary* has the meaning set forth in § 1.1441-1(e)(5)(ii).

(102) *QI agreement*. The term *QI agreement* means the agreement described in § 1.1441-1(e)(5)(iii).

(103) *QI branch of a U.S. financial institution*. The term *QI branch of a U.S. financial institution* means a foreign branch of a U.S. financial institution for which a QI agreement is in effect.

(104) *Recalcitrant account holder*. The term *recalcitrant account holder* has the meaning set forth in § 1.1471-5(g).

(105) *Registered deemed-compliant FFI*. The term *registered deemed-compliant FFI* means an FFI described in § 1.1471-5(f)(1). The term *registered deemed-compliant FFI* also includes a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.

(106) *Relationship manager*. A *relationship manager* is an officer or other employee of an FFI who is assigned responsibility for specific account holders on an on-going basis (including as an officer or employee that is a member of an FFI's private banking department), advises account holders regarding their banking, investment, trust, fiduciary, estate planning, or philanthropic needs, and recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs. Notwithstanding the previous sentence, a person is only a relationship manager with respect to an account that has a balance or value of more than \$1,000,000, taking into account the aggregation rules described in § 1.1471-5(b)(4)(iii)(A) and (B).

(107) *Reporting Model 1 FFI*. The term *reporting Model 1 FFI* means an FFI with respect to which a foreign government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than an FFI that is treated as a nonparticipating FFI under the Model 1 IGA.

(108) *Responsible officer.* The term *responsible officer* means, with respect to a participating FFI, an officer of any participating FFI or reporting Model 1 FFI in the participating FFI's expanded affiliated group with sufficient authority to fulfill the duties of a responsible officer described in §1.1471-4, which include the requirement to periodically certify to the IRS regarding the FFI's compliance with its FFI agreement. The term *responsible officer* means, in the case of a registered deemed-compliant FFI, an officer of any deemed-compliant FFI or participating FFI in the deemed-compliant FFI's expanded affiliated group with sufficient authority to ensure that the FFI meets the applicable requirements of §1.1471-5(f). If a participating FFI elects to be part of a consolidated compliance program, the term *responsible officer* means an officer of the compliance FI (as described in §1.1471-4(f)) with sufficient authority to fulfill the duties of a responsible officer described in §1.1471-4(f)(2) and (3) on behalf of each FFI in the compliance group.

(109) *Restricted distributor.* The term *restricted distributor* means an entity described in §1.1471-5(f)(4).

(110) *Simple trust.* The term *simple trust* means a trust that meets the requirements of section 651(a)(1) and (2).

(111) *Specified insurance company.* The term *specified insurance company* has the meaning set forth in §1.1471-5(e)(1)(iv).

(112) *Specified U.S. person.* The term *specified U.S. person* or *specified United States person* has the meaning set forth in §1.1473-1(c).

(113) *Sponsored FFI.* The term *sponsored FFI* means any entity described in §1.1471-5(f)(1)(i)(F) (sponsored investment entities and sponsored controlled foreign corporations) or §1.1471-5(f)(2)(iii) (sponsored, closely held investment vehicles).

(114) *Sponsored FFI group.* The term *sponsored FFI group* means a group of sponsored FFIs that share the same sponsoring entity.

(115) *Sponsoring entity.* The term *sponsoring entity* means an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or

more FFIs pursuant to §1.1471-5(f)(1)(i)(F) or (2)(iii).

(116) *Standardized industry code.* The term *standardized industry code* means a code that is part of a coding system used by the withholding agent or FFI to classify account holders by business type for purposes other than U.S. tax purposes and that was implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized.

(117) *Standing instructions to pay amounts.* The term *standing instructions to pay amounts* means current payment instructions provided by the account holder, or an agent of the account holder, that will repeat without further instructions being provided by the account holder. Therefore, for example, a payment instruction to make an isolated payment is not a standing instruction to pay amounts, even if the instructions are given one year in advance. However, an instruction to make payments indefinitely is a standing instruction to pay amounts for the period during which such instructions are in effect, even if such instructions are amended after a single payment.

(118) *Subject to withholding.* The term *subject to withholding*, with respect to an amount, means an amount for which withholding is required under chapter 4 or an amount for which chapter 4 withholding was otherwise applied.

(119) *Substantial U.S. owner.* The term *substantial U.S. owner* or *substantial United States owner* has the meaning set forth in §1.1473-1(b).

(120) *Territory entity.* The term *territory entity* means any entity that is incorporated or organized under the laws of any U.S. territory.

(121) *Territory financial institution.* The term *territory financial institution* means a financial institution that is incorporated or organized under the laws of any U.S. territory, not including a territory entity that is an investment entity but that is not a depository institution, custodial institution, or specified insurance company.

(122) *Territory financial institution treated as a U.S. person.* The term *territory financial institution treated as a U.S.*

person means a territory financial institution that is treated as a U.S. person under §1.1471-3(a)(3)(iv).

(123) *Territory NFFE*. The term *territory NFFE* means a territory entity that is not a financial institution, including a territory entity that is an investment entity but is not a depository institution, custodial institution, or specified insurance company.

(124) *TIN*. The term *TIN* means the tax identifying number assigned to a person under section 6109.

(125) *U.S. account*. The term *U.S. account* or *United States account* has the meaning set forth in §1.1471-5(a).

(126) *U.S. branch treated as a U.S. person*. The term *U.S. branch treated as a U.S. person* means a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person under §1.1441-1(b)(2)(iv)(A).

(127) *U.S. financial institution*. The term *U.S. financial institution* means a financial institution that is a U.S. person, including a U.S. branch treated as a U.S. person.

(128) *U.S. indicia*. The term *U.S. indicia* has the meaning set forth in §1.1471-4(c)(5)(iv)(B) when applied to an individual and as set forth in §1.1471-3(e)(4)(v)(A) when applied to an entity.

(129) *U.S. owned foreign entity*. The term *U.S. owned foreign entity* or *United States owned foreign entity* has the meaning set forth in §1.1471-5(c).

(130) *U.S. payee*. The term *U.S. payee* means any payee that is a U.S. person.

(131) *U.S. payor*. The term *U.S. payor* means a U.S. payor or U.S. middleman as defined in §1.6049-5(c)(5).

(132) *U.S. person*. The term *U.S. person* or *United States person* means a person described in section 7701(a)(30), the United States government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof). For purposes of the preceding sentence, the determination of whether an insurance company is a U.S. person is made without regard to an election by a company not licensed to do business in any State to be subject to U.S. income tax as if it were a domestic insurance company. Thus, a foreign insurance company not

licensed to do business in any State that elects pursuant to section 953(d) to be subject to U.S. income tax as if it were a U.S. insurance company is not a U.S. person.

(133) *U.S. source FDAP income*. The term *U.S. source FDAP income* has the meaning set forth in §1.1473-1(a)(2).

(134) *U.S. territory*. The term *U.S. territory* or *possession of the United States* means American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands.

(135) *U.S. withholding agent*. The term *U.S. withholding agent* means a withholding agent that is either a U.S. person or a U.S. branch of a foreign person.

(136) *Withholdable payment*. The term *withholdable payment* has the meaning set forth in §1.1473-1(a).

(137) *Withholding*. The term *withholding* means the deduction and remittance of tax at the applicable rate from a payment.

(138) *Withholding agent*. The term *withholding agent* has the meaning set forth in §1.1473-1(d).

(139) *Withholding certificate*. The term *withholding certificate* means a Form W-8, Form W-9, or any other certificate that under the Code or regulations certifies or establishes the chapter 4 status of a payee or beneficial owner.

(140) *WP*. The term *WP* or *withholding foreign partnership* means a foreign partnership that has executed the agreement described in §1.1441-5(c)(2)(ii).

(141) *Written statement*. The term *written statement* has the meaning set forth in §1.1471-3(c)(4).

(142) *WT*. The term *WT* or *withholding foreign trust* means a foreign grantor trust or foreign simple trust that has executed the agreement described in §1.1441-5(e)(5)(v).

(c) *Effective/applicability date*. This section applies January 28, 2013.

[T.D. 9610, 78 FR 5906, Jan. 28, 2013]

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

(a) *Requirement to withhold on payments to FFIs*—(1) *General rule of withholding*. Under section 1471(a), notwithstanding any exemption from withholding under any other provision of