

seed capital by a member of such expanded affiliated group if—

(i) The member that owns the investment entity is an FFI that is in the business of providing seed capital to form investment entities, the interests in which it intends to sell to unrelated investors;

(ii) The investment entity is created in the ordinary course of such other FFI's business described in paragraph (i)(3)(i) of this section;

(iii) As of the date the FFI acquired the equity interest, any equity interest in the investment entity in excess of 50 percent of the total value of the stock of the investment entity is intended to be held by such other FFI (including ownership by other members of such other FFI's expanded affiliated group) for no more than three years from the date on which such other FFI first acquired an equity interest in the investment entity; and

(iv) In the case of an equity interest that has been held by such other FFI for over three years from the date referenced in paragraph (i)(3)(iii) of this section, the aggregate value of the equity interest held by such other FFI and the equity interests held by other members of its expanded affiliated group is 50 percent or less of the total value of the stock of the investment entity.

(4) *Seed capital.* For purposes of this paragraph (i), the term *seed capital* means an initial capital contribution made to an investment entity that is intended as a temporary investment and is deemed by the manager of the entity to be necessary or appropriate for the establishment of the entity, such as for the purpose of establishing a track record of investment performance for such entity, achieving economies of scale for diversified investment, avoiding an artificially high expense to return ratio, or similar purposes.

(5) *Anti-abuse rule.* A change in ownership, voting rights, or the form of an entity that results in an entity meeting or not meeting the ownership requirements described in paragraph (i)(2) of this section will be disregarded for purposes of determining whether an entity is a member of an expanded affiliated group if the change is pursuant

to a plan a principal purpose of which is to avoid reporting or withholding that would otherwise be required under any chapter 4 provision. For purposes of this paragraph (i)(5), a change in voting rights includes a separation of voting rights and value.

(j) *Effective/applicability date.* This section generally applies on January 28, 2013. For other dates of applicability, see § 1.1471-5(f)(2)(iv).

[T.D. 9610, 78 FR 5961, Jan. 28, 2013]

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

(a) *In general.* This section describes classes of beneficial owners that are identified in section 1471(f) (exempt beneficial owners). Except as otherwise provided in paragraphs (d) (regarding securities held by foreign central banks of issue) and (f) (regarding retirement funds) of this section, a person must be a beneficial owner of a payment to be treated as an exempt beneficial owner with respect to the payment. The following classes of persons are exempt beneficial owners: any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing described in paragraph (b) of this section; any international organization or any wholly owned agency or instrumentality thereof described in paragraph (c) of this section; any foreign central bank of issue described in paragraph (d) of this section; any government of a U.S. territory described in paragraph (e) of this section; certain foreign retirement funds described in paragraph (f) of this section; and certain entities described in paragraph (g) of this section that are wholly owned by one or more other exempt beneficial owners. In addition, an exempt beneficial owner includes any person treated as an exempt beneficial owner pursuant to a Model 1 IGA or Model 2 IGA. See §§ 1.1471-2(a)(4)(v) and 1.1472-1(c)(2) for the exemptions from withholding for payments beneficially owned by an exempt beneficial owner; § 1.1471-3(d)(9) for the documentation requirements applicable to a withholding agent for purposes of determining when a withholdable payment is beneficially owned by an exempt beneficial owner; and § 1.1471-3(d)(8)(ii)

for when a withholding agent may treat a payment made to a nonparticipating FFI as beneficially owned by an exempt beneficial owner.

(b) *Any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.* Solely for purposes of this section and except as provided in paragraph (h) of this section, the term *any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing* means only the integral parts, controlled entities, and political subdivisions of a foreign sovereign.

(1) *Integral part.* Solely for purposes of this paragraph (b), an *integral part* of a foreign sovereign is any person, body of persons, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a foreign country. The net earnings of the governing authority must be credited to its own account or to other accounts of the foreign sovereign, with no portion inuring to the benefit of any private person as defined in paragraph (b)(3) of this section. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity. All the facts and circumstances will be taken into account in determining whether an individual is acting in a private or personal capacity.

(2) *Controlled entity.* Solely for purposes of this paragraph (b), a *controlled entity* means an entity that is separate in form from a foreign sovereign or that otherwise constitutes a separate juridical entity, provided that—

(i) The entity is wholly owned and controlled by one or more foreign sovereigns directly or indirectly through one or more controlled entities;

(ii) The entity's net earnings are credited to its own account or to other accounts of one or more foreign sovereigns, with no portion of its income inuring to the benefit of any private person as defined in paragraph (b)(3) of this section; and

(iii) The entity's assets vest in one or more foreign sovereigns upon dissolution.

(3) *Inurement to the benefit of private persons.* Solely for purposes of this paragraph (b)—

(i) Income does not inure to the benefit of private persons if such persons (within the meaning of section 7701(a)(1)) are the intended beneficiaries of a governmental program carried on by a foreign sovereign, and the program activities constitute governmental functions under the regulations under section 892.

(ii) Income is considered to inure to the benefit of private persons if such income benefits—

(A) Private persons through the use of a governmental entity as a conduit for personal investment;

(B) Private persons through the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons; or

(C) Private persons who divert such income from its intended use by exerting influence or control through means explicitly or implicitly approved of by the foreign sovereign.

(c) *Any international organization or any wholly owned agency or instrumentality thereof.* Except as provided in paragraph (h) of this section, the term *any international organization or any wholly owned agency or instrumentality thereof* means any entity described in section 7701(a)(18). The term also includes any intergovernmental or supranational organization—

(1) That is comprised primarily of foreign governments;

(2) That is recognized as an intergovernmental or supranational organization under a foreign law similar to 22 U.S.C. 288-288f or that has in effect a headquarters agreement with a foreign government; and

(3) Whose income does not inure to the benefit of private persons under the principles of paragraph (b)(3)(ii) of this section, as applied to the intergovernmental or supranational organization in place of the government or governmental entity.

(d) *Foreign central bank of issue*—(1) *In general.* Solely for purposes of this section and except as provided in paragraph (h) of this section, the term *foreign central bank of issue* means a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such a bank is generally the custodian of the banking reserves of the country under whose law it is organized.

(2) *Separate instrumentality.* A foreign central bank of issue may include an instrumentality that is separate from a foreign government, whether or not owned in whole or in part by a foreign government. For example, foreign banks organized along the lines of, and performing functions similar to, the Federal Reserve System qualify as foreign central banks of issue for purposes of this section.

(3) *Bank for International Settlements.* The Bank for International Settlements is a foreign central bank of issue for purposes of this section.

(4) *Income on certain collateral.* Solely for purposes of determining whether an entity is an exempt beneficial owner of a payment under this paragraph (d), a foreign central bank of issue is a beneficial owner with respect to income earned on securities, including securities held as collateral or in connection with a securities lending transaction, held by the foreign central bank of issue in the normal course of its operations as a central bank of issue.

(e) *Governments of U.S. territories.* Except as provided in paragraph (h) of this section, whether a person or entity constitutes a government of a U.S. territory for purposes of this section is determined by applying principles analogous to those set forth in paragraph (b) of this section.

(f) *Certain retirement funds.* A fund is described in this paragraph (f) if it is described in paragraphs (f)(1) through (6) of this section. In addition, if a withholding agent may treat a withholdable payment as made to a payee that is a retirement fund in accordance with § 1.1471-3, then the withholding agent may also treat such retirement fund as the beneficial owner of the payment. See § 1.1471-3(d)(9)(ii).

(1) *Treaty-qualified retirement fund.* A fund established in a country with which the United States has an income tax treaty in force, provided that the fund is entitled to benefits under such treaty on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of the other country that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits;

(2) *Broad participation retirement fund.* A fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund—

(i) Does not have a single beneficiary with a right to more than five percent of the fund's assets;

(ii) Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates; and

(iii) Satisfies one or more of the following requirements—

(A) The fund is generally exempt from tax on investment income under the laws of the country in which it is established or operates due to its status as a retirement or pension plan;

(B) The fund receives at least 50 percent of its total contributions (other than transfers of assets from accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts) or from other plans described in this paragraph (f)) from the sponsoring employers;

(C) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts) or other retirement funds described in this paragraph (f)), or penalties apply to distributions or withdrawals made before such specified events; or

(D) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually.

(3) *Narrow participation retirement funds.* A fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for prior services rendered, provided that—

(i) The fund has fewer than 50 participants;

(ii) The fund is sponsored by one or more employers that are not investment entities or passive NFFEs;

(iii) Employee and employer contributions to the fund (other than transfers of assets from other funds described in paragraph (f)(1) of this section or accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts)) are limited by reference to earned income and compensation of the employee, respectively;

(iv) Participants that are not residents of the country in which the fund is established or operated are not entitled to more than 20 percent of the fund's assets; and

(v) The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates.

(4) *Fund formed pursuant to a plan similar to a section 401(a) plan.* A fund formed pursuant to a pension plan that would meet the requirements of section 401(a), other than the requirement that the plan be funded by a trust created or organized in the United States.

(5) *Investment vehicles exclusively for retirement funds.* A fund established exclusively to earn income for the benefit of one or more retirement funds described in paragraphs (f)(1) through (5) of this section or accounts described in § 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts).

(6) *Pension fund of an exempt beneficial owner.* A fund established and sponsored by an exempt beneficial owner described in paragraph (b), (c), (d), or

(e) of this section to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, but the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

(7) *Example.* FP, a foreign pension fund established in Country X, is generally exempt from income taxation in Country X, and is operated principally to provide retirement benefits in such country. The U.S.-Country X income tax treaty is identical in all material respects to the 2006 U.S. model income tax convention. FP is a resident of Country X under Article 4(2)(a) and a qualified person under Article 22(2)(d) of the U.S.-Country X income tax treaty. Therefore, FP is a pension fund described in paragraph (f)(1) of this section.

(g) *Entities wholly owned by exempt beneficial owners.* A person is described in this paragraph (g) if it is an FFI solely because it is an investment entity, each direct holder of an equity interest in the investment company is an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section, and each direct holder of a debt interest in the investment entity is either a depository institution (with respect to a loan made to such entity) or an exempt beneficial owner described in paragraph (b), (c), (d), (e), (f), or (g) of this section.

(h) *Exception for commercial activities—*  
 (1) *General rule.* An exempt beneficial owner described in paragraph (b), (c), (d), or (e) of this section will not be treated as an exempt beneficial owner with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by an insurance company, custodial institution, or depository institution (including the accepting of deposits). Thus, for example, a central bank of issue that conducts a commercial financial activity, such as acting as an intermediary on behalf of persons other than in the bank's capacity as a central bank of issue, is not an exempt beneficial owner under paragraph (d)(1) of this

section with respect to payments received in connection with an account held in connection with such activity.

(2) *Limitation.* Paragraph (h)(1) of this section will not apply if—

(i) An entity undertakes commercial financial activity described in paragraph (h)(1) of this section solely for or at the direction of other exempt beneficial owners and such commercial financial activity is consistent with the purposes of the entity;

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

(iii) The entity otherwise maintains financial accounts only for exempt beneficial owners.

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

[T.D. 9610, 78 FR 5976, Jan. 28, 2013]

#### § 1.1472-1 Withholding on NFFEs.

(a) *In general.* This section provides rules that a withholding agent must apply to determine its obligations to withhold under section 1472 on withholdable payments made to a payee that is an NFFE. A participating FFI that complies with its withholding obligations under § 1.1471-4(b) will be deemed to satisfy its obligations under section 1472 with respect to withholdable payments made to NFFEs that are account holders. The rules of this section will apply, however, in the case of a participating FFI acting as a withholding agent with respect to a payment made to an NFFE that is not an account holder (for example, a payment with respect to a contract that does not constitute a financial account). 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.

(b) *Withholdable payments made to an NFFE—(1) In general.* Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief) or paragraph (c) of this section (providing exceptions for payments to an excepted NFFE, a WP or WT, or an exempt beneficial owner), a withholding agent must withhold 30 percent of any withholdable payment made after De-

cember 31, 2013, to a payee that is an NFFE unless—

(i) The beneficial owner of such payment is the NFFE or any other NFFE;

(ii) The withholding agent can, pursuant to paragraph (d) of this section, treat the beneficial owner of the payment as an NFFE that does not have any substantial U.S. owners, or as an NFFE that has identified its substantial U.S. owners; and

(iii) The withholding agent reports the information described in § 1.1474-1(i)(2) relating to any substantial U.S. owners of the beneficial owner of such payment.

(2) *Transitional relief.* For any withholdable payment made prior to January 1, 2015, with respect to a pre-existing 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 with one or more substantial U.S. owners, 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) *Exceptions—(1) Beneficial owner that is an excepted NFFE.* A withholding agent is not required to withhold under section 1472(a) and paragraph (b) of this section on a withholdable payment (or portion thereof) if the withholding agent can treat the payment as beneficially owned by an excepted NFFE. An *excepted NFFE* means an NFFE that is—

(i) *Publicly traded corporation.* A corporation the stock of which is regularly traded on one or more established securities markets for the calendar year.

(A) *Regularly traded.* For purposes of this section, stock of a corporation is *regularly traded* on one or more established securities markets for a calendar year if—

(1) One or more classes of stock of the corporation that, in the aggregate, represent more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the prior calendar year; and