that is a U.S. person and for which a withholding agent has both a U.S. address and TIN, the withholding agent shall presume that the trust is a grantor trust when it cannot determine the status of the trust as a simple trust, complex trust, or grantor trust. See §1.1471-3(f)(4) and (5) to determine the status of the payee for purposes of chapter 4.

(iii) [Reserved] For further guidance, see §1.1441-5(e)(6)(iii).

(f) Failure to receive withholding certificate timely or to act in accordance with applicable presumptions. See applicable procedures described in §1.1441-1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or fails to rely on the presumptions set forth in §1.1441-1(b)(3) or in paragraph (d) or (e) of this section. For a payment that is a withholdable payment, see §1.1471-3(f) for the presumption rule for determining the payee’s chapter 4 status.

(g)(1) and (2) [Reserved] For further guidance, see §1.1441-5(g)(1) and (2).

(g)(3) Effective/applicability date. This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR Part 1, as revised April 1, 2013.)

(h) Expiration date. The applicability of this section expires on February 28, 2017.

[T.D. 9658, 79 FR 12775, Mar. 6, 2014]

§1.1441-6 Claim of reduced withholding under an income tax treaty.

(a) [Reserved] For further guidance, see §1.1441-6T(a).

(b)(1) [Reserved] For further guidance, see §1.1441-6T(b)(1).

(2)(i) [Reserved] For further guidance, see §1.1441-6T(b)(2)(i).

(ii) Certification by qualified intermediary. Notwithstanding paragraph (b)(2)(i) of this section, a foreign entity that is fiscally transparent, as defined in the regulations under section 894, that is also a qualified intermediary for purposes of claiming a reduced rate of withholding under an income tax treaty for its interest holders (who are residents of an applicable treaty jurisdiction) may furnish a single qualified intermediary withholding certificate, as described in §1.1441-1(e)(3)(ii), for amounts for which it claims a reduced rate of withholding under an income tax treaty on behalf of its interest holders.

(iii) Dual treatment. Under paragraph (b)(2)(i) of this section, a withholding agent may make a payment to a foreign entity that is simultaneously claiming to be the beneficial owner of a portion of the income (whether or not it is also claiming a reduced rate of tax on its own behalf) and a reduced rate on behalf of persons in their capacity as interest holders in the entity with respect to the same, or a different, portion of the income. If the same portion of a payment may be reliably associated with both the entity’s claim and an interest holder’s claim, the withholding agent may choose to reject both claims and request new documentation and information allocating the payment among the beneficial owners of the payment or the withholding agent may choose which claim to apply. If the entity and the interest holder’s claims are reliably associated with separate portions of the payment, the withholding agent may, at its option, accept such dual claims based on withholding certificates or other appropriate documentation furnished by the entity and its interest holders with respect to their respective shares of the payment even though this will result in the withholding agent treating the entity differently with respect to different portions of the same payment. Alternatively, the withholding agent may choose to apply only the claim made by the entity, provided the entity may be treated as a beneficial owner of the income. If the withholding agent does not accept claims for a reduced rate of withholding presented by any one or more of the interest holders, or by the entity, any interest holder or the entity may subsequently claim a refund or credit of any amount so withheld to the extent the interest holder’s or entity’s share of such withholding exceeds the amount of tax due.

(iv) [Reserved] For further guidance, see §1.1441-6T(b)(2)(iv).
(3) **Certified TIN.** The IRS may issue guidance requiring a foreign person claiming treaty benefits and for whom a TIN is required to establish with the IRS, at the time the TIN is requested or after the TIN is issued, that the person is a resident in a treaty country and meets other conditions (such as limitation on benefits provisions) of the treaty. See §601.601(d)(2) of this chapter.

(4) **Claim of benefits under an income tax treaty by a U.S. person.** In certain cases, a U.S. person may claim the benefit of an income tax treaty. For example, under certain treaties, a U.S. citizen residing in the treaty country may claim a reduced rate of U.S. tax on certain amounts representing a pension or an annuity from U.S. sources. Claims of treaty benefits by a U.S. person may be made by furnishing a Form W–9 to the withholding agent or such other form as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter).

(c)(1) [Reserved] For further guidance, see §1.1441–6T(c)(1).

(2) **Income to which special rules apply.** The income to which paragraph (c)(1) of this section applies is dividends and interest from stocks and debt obligations that are actively traded, dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a), and amounts paid with respect to loans of securities described in this paragraph (c)(2). With respect to a dividend equivalent described in section 871(m) and the regulations thereunder, this paragraph (c)(2) applies to the extent that the underlying security described in section 871(m) and the regulations thereunder satisfies the requirements of this paragraph (c)(2). For purposes of this paragraph (c)(2), a stock or debt obligation is actively traded if it is actively traded within the meaning of section 1092(d) and §1.1092(d)–1 when documentation is provided.

(3) **Certificate of residence.** A certificate of residence referred to in paragraph (c)(1) of this section is a certification issued by an appropriate tax official of the treaty country of which the taxpayer claims to be a resident that the taxpayer has filed its most recent income tax return as a resident of that country (within the meaning of the applicable tax treaty). The certificate of residence must have been issued by such official within three years prior to its being presented to the withholding agent, or such other period as the IRS may prescribe in published guidance (see §601.601(d)(2) of this chapter). See §1.1441–1(e)(4)(ii)(A) for the period during which a withholding agent may rely on a certificate of residence. The competent authorities may agree to a different procedure for certifying residence, in which case such procedure shall govern for payments made to a person claiming to be a resident of the country with which such an agreement is in effect.

(4) **Documentary evidence establishing residence in the treaty country—(i) Individuals.** For an individual, the documentary evidence referred to in paragraph (c)(1) of this section is any documentation that includes the individual's name, address, and photograph, is an official document issued by an authorized governmental body (i.e., a government or agency thereof, or a municipality), and has been issued no more than three years prior to presentation to the withholding agent. A document older than three years may be relied upon as proof of residence only if it is accompanied by additional evidence of the person's residence in the treaty country (e.g., a bank statement, utility bills, or medical bills). Documentary evidence must be in the form of original documents or certified copies thereof.

(ii) **Persons other than individuals.** For a person other than an individual, the documentary evidence referred to in paragraph (c)(1) of this section is any documentation that includes the name of the entity and the address of its principal office in the treaty country, and is an official document issued by an authorized governmental body (e.g., a government or agency thereof, or a municipality).
(5) Statements regarding entitlement to treaty benefits—(i) Statement regarding conditions under a limitation on benefits provision. In addition to the documentary evidence described in (c)(4)(ii) of this section, a taxpayer that is not an individual must provide a statement that it meets one or more of the conditions set forth in the limitation on benefits article (if any, or in a similar provision) contained in the applicable tax treaty.

(ii) Statement regarding whether the taxpayer derives the income. A taxpayer that is not an individual must also provide, in addition to the documentary evidence and the statement described in paragraph (c)(5)(i) of this section, a statement that any income for which it intends to claim benefits under an applicable income tax treaty is income that will properly be treated as derived by itself as a resident of the applicable treaty jurisdiction within the meaning of section 894 and the regulations thereunder. This requirement does not apply if the taxpayer furnishes a certificate of residence that certifies that fact.

(d) Joint owners. In the case of a payment to joint owners, each owner must furnish a withholding certificate or, if applicable, documentary evidence or a certificate of residence. The applicable rate of withholding on a payment of income to joint owners shall be the highest applicable rate.

(e) Competent authority. The procedures described in this section may be modified to the extent the U.S. competent authority may agree with the competent authority of a country with which the United States has an income tax treaty in effect.

(f) Failure to receive withholding certificate timely. See applicable procedures described in §1.1441-1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment.

(g) Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits—(1) General rule. Except as provided in paragraph (c) or (g)(2) of this section, for purposes of paragraph (b)(1) of this section, a withholding agent may not rely on a beneficial owner withholding certificate, described in paragraph (b)(1) of this section, that does not include the beneficial owner’s taxpayer identifying number (TIN).

(2) Special rule. For purposes of satisfying the TIN requirement of paragraph (b)(1) of this section, a withholding agent may rely on a beneficial owner withholding certificate, described in such paragraph, without regard to the requirement that the withholding certificate include the beneficial owner’s TIN, if—

(i) A withholding agent, who is also an acceptance agent, as defined in §301.6109–1(d)(3)(iv) of this chapter (the payor), has entered into an acceptance agreement that permits the acceptance agent to request an individual taxpayer identification number (ITIN) on an expedited basis because of the circumstances of payment or unexpected nature of payments required to be made by the payor;

(ii) The payor was required to make an unexpected payment to the beneficial owner who is a foreign individual;

(iii) An ITIN for the beneficial owner cannot be received by the payor from the Internal Revenue Service (IRS) because the IRS is not issuing ITINs at the time of payment or any time prior to the time of payment when the payor has knowledge of the unexpected payment;

(iv) The unexpected payment to the beneficial owner could not be reasonably delayed to permit the payor to obtain an ITIN for the beneficial owner on an expedited basis; and

(v) The payor satisfies the provisions of paragraph (g)(3) of this section.

(3) Requirement that an ITIN be requested during the first business day following payment. The payor must submit a beneficial owner payee application for an ITIN (Form W–7 “Application for IRS Individual Taxpayer Identification Number”) that complies with the requirements of §301.6109–1(d)(3)(ii) of this chapter, and also the certification described in §301.6109–1(d)(3)(iv)(A)(4) of this chapter, to the IRS during the first business day after payment is made.
(4) Definition of unexpected payment. For purposes of this section, an unexpected payment is a payment that, because of the nature of the payment or the circumstances in which it is made, could not reasonably have been anticipated by the payor or beneficial owner during a time when the payor or beneficial owner could obtain an ITIN from the IRS. For purposes of this paragraph (g)(4), a payor or beneficial owner will not lack the requisite knowledge of the forthcoming payment solely because the amount of the payment is not fixed.

(5) Examples. The rules of this paragraph (g) are illustrated by the following examples:

Example 1. G, a citizen and resident of Country Y, a country with which the United States has an income tax treaty that exempts U.S. source gambling winnings from U.S. tax, is visiting the United States for the first time. During his visit, G visits Casino B, a casino that has entered into a special acceptance agent agreement with the IRS that permits Casino B to request an ITIN on an expedited basis. During that visit, on a Sunday, G wins $5000 in slot machine play at Casino B and requests immediate payment. On Tuesday, G gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, G agrees.

Example 2. The facts are the same as Example 1, except G visits Casino B on Monday. G requests payment Monday afternoon. In order to pay the winnings to G without withholding the 30 percent tax, Casino B must apply for and obtain an ITIN for G because an expedited ITIN is available from the IRS at the time of the $5000 payment to G.

Example 3. The facts are the same as Example 1, except G requests payment fifteen minutes before the time when the IRS begins issuing ITINs. Under these facts, it would be reasonable for Casino B to delay payment to G. Therefore, Casino B must apply for and obtain an ITIN for G if G wishes to claim an exemption from U.S. withholding tax under the U.S.-Y tax treaty at the time of payment.

Example 4. P, a citizen and resident of Country Z, is a lawyer and a well-known expert on real estate transactions. P is scheduled to attend a three-day seminar on complex real estate transactions, as a participant, at University U, a U.S. university, beginning on a Saturday and ending on the following Monday, which is a holiday. University U has entered into a special acceptance agent agreement with the IRS that permits University U to request an ITIN on an expedited basis. Country Z is a country with which the United States has an income tax treaty that exempts certain income earned from the performance of independent personal services from U.S. tax. It is P’s first visit to the United States. On Saturday, prior to the start of the seminar, Professor Q, one of the lecturers at the seminar, cancels his lecture. That same day the Dean of University U offers P $5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, P, who does not have an ITIN, requests payment for her teaching. P furnishes a beneficial owner withholding certificate, described in §1.1441–1(e)(2), to University U to request an ITIN on an expedited basis. University U offers P $5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P offers to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees.

(h) Dividend equivalents. The rate of withholding on a dividend equivalent may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. For this purpose, a dividend equivalent as described in section 871(m) and the regulations thereunder is treated as a dividend from sources.
§ 1.1441–6T Claim of reduced withholding under an income tax treaty (temporary).

(a) In general. The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country. See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See, however, §1.1471–2(a) and §1.1472–1(b) for when withholding at source on a withholdable payment may not be reduced to account for a treaty benefit and the beneficial owner of the payment may need to file a claim for refund to obtain a refund for the overwithheld amount of tax. See also §1.1441–4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

(b) Reliance on claim of reduced withholding under an income tax treaty—(1) In general. The withholding imposed under section 1441, 1442, or 1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner, and all other requirements for benefits under the treaty are specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

(3) [Reserved] For further guidance, see §1.1441–6T(i)(3).