

(8) *Accrual period.* For purposes of this section, a broker generally must use the same accrual period that is used to report any original issue discount or stated interest to a customer under section 6049 for a debt instrument. In any other situation, a broker must use a semi-annual accrual period or, if a debt instrument provides for scheduled payments of principal or interest at regular intervals of less than six months over the entire term of the debt instrument, a broker must use an accrual period equal in length to this shorter interval. For example, if a debt instrument provides for monthly payments of interest over the entire term of the debt instrument, the broker must use a monthly accrual period. The rules in § 1.1272-1(b)(4)(iii) apply for purposes of an initial short accrual period. In computing the length of an accrual period, any reasonable counting convention may be used (for example, 30 days per month/360 days per year, or actual days per month/365 days per year).

(9) *Premium on convertible bond.* If a customer acquires a convertible bond (as defined in § 1.171-1(e)(1)(iii)(C)) at a premium (as determined under § 1.171-1(d)), then, solely for purposes of this section and § 1.6049-9T, a broker must assume that the premium is attributable to the conversion feature. Based on this assumption, no portion of the premium is amortizable for purposes of this section and § 1.6049-9T.

(10) *Effect of broker assumptions on customer.* The rules in this paragraph (n) only apply for purposes of a broker's reporting obligation under section 6045. A customer is not bound by the assumptions that the broker uses to satisfy the broker's reporting obligations under section 6045. In addition, a notification to the broker under paragraph (n)(5) of this section does not constitute an effective election or revocation under the applicable rules for the election.

(o) *Additional reporting by stock transfer agents.* [Reserved]

(p) *Electronic filing.* Notwithstanding the time prescribed for filing in paragraph (j) of this section, Forms 1096 and 1099 required under this section for reporting periods ending during a calendar year shall, if filed electronically,

be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before March 31 of the following calendar year.

[T.D. 7873, 48 FR 10304, Mar. 11, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6045-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 1.6045-1T Returns of information of brokers and barter exchanges (temporary).

(a) through (c)(3)(i) [Reserved] For further guidance, see § 1.6045-1(a) through (c)(3)(i)(C)(2)(iv).

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is—

(A) So designated by the Internal Revenue Service in a revenue ruling or revenue procedure (see § 601.601(d)(2) of this chapter); or

(B) A sale with respect to which a return is not required by applying the rules of § 1.6049-4(c)(4) (by substituting the term *a sale subject to reporting under section 6045* for the term *an interest payment*).

(iii) through (xiii) [Reserved] For further guidance, see § 1.6045-1(c)(3)(iii) through (xiii).

(xiv) *Certain redemptions.* No return of information is required under this section for payments made by a stock transfer agent (as described in § 1.6045-1(b)(iv)) with respect to a redemption of stock of a corporation described in section 1297(a) with respect to a shareholder in the corporation if—

(A) The stock transfer agent obtains from the corporation a written certification signed by an officer of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the stock transfer agent relies on the provisions of paragraph (c)(3)(xiv) of this section, and the stock transfer agent has no reason to know that the written certification is unreliable or incorrect;

(B) The stock transfer agent identifies, prior to payment, the corporation

as a participating FFI (including a reporting Model 2 FFI (as defined in §1.6049-4(f)(10) or (f)(14), respectively), or reporting Model 1 FFI (as defined in §1.6049-4(f)(13)), in accordance with the requirements of §1.1471-3(d)(4) (substituting the terms *stock transfer agent* and *corporation* for the terms *withholding agent* and *payee*);

(C) The stock transfer agent obtains, before each year the payment would otherwise be reported, a written certification representing that the corporation shall report the payment as part of its account holder reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in §1.6049-4(f)(7)) and provided the stock transfer agent does not know that the corporation is not reporting the payment as required. A stock transfer agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(D) The stock transfer agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payment.

(xv) *Effective/applicability date.* Paragraphs (c)(3)(ii) and (xiv) of this section apply to sales effected on or after July 1, 2014. (For sales effected before July 1, 2014, see paragraph (c)(3)(ii) of this section as in effect and contained in 26 CFR Part 1 revised April 1, 2013.)

(c)(4) through (g)(1) [Reserved] For further guidance, see §1.6045-1(c)(4) through (g)(1).

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can, prior to the payment, reliably associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with §1.1441-1(e)(1)(ii), as made to a foreign payee in accordance with §1.6049-5(d)(1), or presumed to be made to a foreign payee under §1.6049-5(d)(2) or (3). For purposes of this paragraph (g)(1)(i), the provisions in §1.6049-5(c) regarding rules applicable to documentation of foreign status

shall apply with respect to a sale when the broker completes the acts necessary to effect the sale at an office outside the United States, as described in paragraph (g)(3)(iii)(A) of this section, and no office of the same broker within the United States negotiated the sale with the customer or received instructions with respect to the sale from the customer. The provisions in §1.6049-5(c) regarding the definitions of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman shall also apply for purposes of this paragraph (g)(1)(i). The provisions of §1.1441-1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee* and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code). The provisions of §1.6049-5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee*. For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate described in §1.1441-1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. The certification is not required if a broker receives documentary evidence under §1.6049-5(c)(1) or (4).

(ii) through (3)(iii) [Reserved] For further guidance, see §1.6045-1(g)(1)(ii) through (g)(3)(iii).

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in §1.1441-1(c)(13), is an exempt foreign person, except when the broker has actual knowledge (within the meaning of §1.6049-5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under paragraph (c)(3) of this section or the broker is required to presume under §1.6049-5(d)(3) that the

payee is a U.S. person that is not an exempt recipient. If a foreign intermediary, as described in §1.1441-1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor or middleman, which payment the payor or middleman can reliably associate with a valid withholding certificate described in §1.1441-1(e)(3)(ii) or (iii) or §1.1441-1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in §1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under paragraph (c)(3) of this section to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. See, however, paragraph (c)(3)(ii) of this section for when reporting under section 6045 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in §1.6049-4(f)(7)). The exception of this paragraph (g)(3)(iv) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code except as provided under the agreement described in §1.1441-1(e)(5)(iii).

(4) *Examples.* The application of the provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in §1.6049-5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that rea-

son, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in §1.6049-5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under paragraph (c)(3)(iii) of this section, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

Example 2. The facts are the same as in *Example 1* except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

Example 3. The facts are the same as in *Example 2* except that FP is also the agent of A. The result is the same as in *Example 2*. Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of §1.6049-5(c)(5)).

Example 4. The facts are the same as in *Example 1* except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in §1.6049-5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

Example 5. The facts are the same as in *Example 4* except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under

the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in §1.6049-5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

Example 6. The facts are the same as in *Example 4* except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC DP is a U.S. payor under §1.6049-5(c)(5). DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

Example 7. Customer A owns U.S. corporate bonds issued in registered form after July 18, 1984, and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of §1.1441-1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y and has no actual knowledge that A is a foreign person but it does appear that A is an entity (rather than an individual).

(i) *Y's obligations to withhold and report.* Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042-S under §1.1461-1(c)(2)(ii) because accrued interest is not an amount subject to reporting under chapter 3 unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a controlled foreign corporation and therefore is a U.S. payor. See §1.6049-5(c)(5). Under the presumptions described in

§1.6049-5(d)(2) (as applied to amounts not subject to withholding under chapter 3), X must apply the presumption rules of §1.1441-1(b)(3)(i) through (iii), with respect to the sales proceeds, to treat A as a partnership that is a U.S. non-exempt recipient because the presumption of foreign status for offshore obligations under §1.1441-1(b)(3)(iii)(D) does not apply. See paragraph (g)(1)(i) of this section. Therefore, unless X is an FFI (as defined in §1.1471-1(b)(47)) that is excepted from reporting the sales proceeds under paragraph (c)(3)(ii) of this section, the payment of proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under §31.3406(g)-1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (see paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient with respect to the payment because accrued interest is not an amount subject to withholding under chapter 3 and, therefore, the presumption of foreign status for offshore obligations under §1.1441-1(b)(3)(iii)(D) does not apply. See §1.6049-5(d)(2)(i).

Example 8. The facts are the same as in *Example 7*, except that X is a foreign corporation that is not a U.S. payor under §1.6049-5(c).

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is the person responsible for paying the proceeds from the sale to A.

(ii) *X's obligations to withhold and report.* Although A is presumed to be a U.S. payee under the presumptions of §1.6049-5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is not a U.S. payor under §1.6049-5(c)(5). Therefore X is not required to report the sale under paragraph (c)(2) of this section.

(5) introductory text and (5)(i) [Reserved] For further guidance, see §1.6045-1(g)(5) introductory text and (g)(5)(i).

(ii) The provisions of paragraphs (g)(1)(i), (g)(3)(iv), and (g)(4) of this section apply to payments made on or after July 1, 2014.

(h) through (k) [Reserved] For further guidance, see §1.6045-1(h) through (k).

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see §301.6011-2T of this chapter for

§ 1.6045-2

26 CFR Ch. I (4-1-14 Edition)

rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. For information returns filed prior to January 1, 1997, see § 1.6045-1(l)

(m)-(o) [Reserved]

(p) [Reserved] For further guidance, see § 1.6045-1(p).

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

[T.D. 8683, 61 FR 53060, Oct. 10, 1996, as amended by T.D. 9658, 79 FR 12795, Mar. 6, 2014]

§ 1.6045-2 Furnishing statement required with respect to certain substitute payments.

(a) *Requirement of furnishing statements—(1) In general.* Any broker (as defined in paragraph (a)(4)(ii) of this section) that transfers securities (as defined in § 1.6045-1(a)(3)) of a customer (as defined in paragraph (a)(4)(iii) of this section) for use in a short sale and receives on behalf of the customer a substitute payment (as defined in paragraph (a)(4)(i)) shall, except as otherwise provided, furnish a statement to the customer identifying such payment as being a substitute payment.

(2) *Special rule for transfers for broker's own use.* Any broker that borrows securities of a customer for use in a short sale entered into for the broker's own account shall be deemed to have transferred the stock to itself and received on behalf of the customer any substitute payment made with respect to the transferred securities, and shall be required to furnish a statement with respect to such payments in accordance with paragraph (a)(1) of this section.

(3) *Special rule for furnishing statements to individual customers with respect to payments in lieu of dividends—(i) In general.* Except as otherwise provided in paragraph (a)(3)(ii) of this section, for taxable years beginning before January 1, 2003, a broker that receives a substitute payment in lieu of a dividend on behalf of a customer who is an individual ("individual customer") need not furnish a statement to the customer.

(ii) *Reporting for certain dividends.* Any broker that receives on behalf of

an individual customer a substitute payment in lieu of—

(A) An exempt-interest dividend (as defined in paragraph (a)(4)(vii) of this section);

(B) A capital gain dividend (as defined in paragraph (a)(4)(vi) of this section);

(C) A distribution treated as a return of capital under section 301(c)(2) or (c)(3); or

(D) An FTC dividend (as defined in paragraph (a)(4)(viii) of this section) shall furnish a statement to the individual customer identifying the payment as being a substitute payment as prescribed by this section, provided that the broker has reason to know not later than the record date of the dividend payment that the payment is a substitute payment in lieu of an exempt-interest dividend, a capital gain dividend, a distribution treated as a return of capital, or an FTC dividend.

(4) *Meaning of terms.* The following definitions apply for purposes of this section.

(i) The term *substitute payment* means a payment in lieu of—

(A) Tax-exempt interest, to the extent that interest has accrued on the obligation for the period during which the short sale is open;

(B) A dividend, the ex-dividend date for which occurs during the period after the transfer of stock for use in a short sale, and prior to the closing of the short sale; or

(C) Any other item specified in a rule-related notice published in the FEDERAL REGISTER (provided that such items shall be subject to the rules of this section only subsequent to the time of such publication).

For purposes of this section original issue discount accruing on an obligation (the interest upon which is exempt from tax under section 103) for the period during which the short sale is open shall be deemed a payment in lieu of tax-exempt interest.

(ii) The term *broker* means both a person described in § 1.6045-1(a)(1) and a person that, in the ordinary course of a trade or business during the calendar year, loans securities owned by others.

(iii) The term *customer* means, with respect to a transfer of securities for use in a short sale, the person that is