DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 301

[TD 9808]

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Regulations Regarding Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary regulations; final regulations; and temporary regulations.

SUMMARY: This document contains final and temporary regulations regarding withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, and portfolio interest paid to nonresident alien individuals and foreign corporations. This document finalizes (with minor changes) certain proposed regulations under chapters 3 and 61 and sections 871, 3406, and 6402 of the Internal Revenue Code of 1986 (Code), and withdraws corresponding temporary regulations. This document also includes temporary regulations providing additional rules under chapter 3 of the Code. The text of the temporary regulations also serves as the text of the proposed regulations set forth in a notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. The temporary regulations affect persons making payments of U.S. source income to foreign persons.

DATES: *Effective date.* These regulations are effective on January 6, 2017.

Applicability dates. For dates of applicability, see §§ 1.871–14(j), 1.1441–1(f), 1.1441–3(i), 1.1441–4(g), 1.1441–5(g), 1.1441–6(i), 1.1441–7(g), 1.1461–1(i), 1.1461–2(d), 1.6041–1(j), 1.6041–4(d), 1.6042–2(f), 1.6042–3(d), 1.6045–1(q), 1.6049–4(h), 1.6049–5(g), 31.3406(g)–1(g), 31.3406(h)–2(i), and 301.6402–3(f).

FOR FURTHER INFORMATION CONTACT: Leni Perkins at (202) 317–6942 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in these temporary regulations is contained in a number of provisions including §§ 1.1441–1, 1.1441–3, 1.1441–4, and 1.1441–5. The IRS intends that the information collection requirements of these regulations will be implemented through use of the W–8 series of forms, Form W–9, Form 1042, Form 1042–S, the 1099 series of forms, and Form 8966, as well as certain income tax returns (for example, Forms 1040, 1040–NR, and 1120F). As a result, for purposes of the Paperwork Reduction Act (44 U.S.C. 3507), the reporting burden associated with the collection of information in these regulations will be reflected in the information collection burden and OMB control number of the appropriate IRS form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 871, 1441, 1461, 6041, 6042, 6045, 6049, and 6050 of the Code, the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Code, and the Procedure and Administration Regulations (26 CFR part 301) under section 6402 of the Code. On January 28, 2013, final regulations (TD 9610) under chapter 4 of the Code (sections 1471 through 1474) were published in the **Federal Register** (78 FR 5874), and on September 10, 2013, corrections to the final regulations were published in the **Federal Register** (78 FR 55202). The regulations in TD 9610 and the corrections thereto are collectively referred to in this preamble as the 2013 final chapter 4 regulations. To coordinate with certain provisions of the 2013 final chapter 4 regulations, as well as temporary regulations (TD 9657) under chapter 4 published in the **Federal Register** (79 FR 12812) on March 6, 2014, temporary regulations (TD 9658) revising certain provisions of the final chapters 3 and 61 regulations were published in the **Federal Register** (79 FR 12726) on March 6, 2014, and corrections to those temporary regulations were published in the **Federal Register** (79 FR 37181) on July 1, 2014. Collectively, the regulations in TD 9657 and the corrections thereto are referred to in this preamble as the 2014 temporary coordination regulations. A notice of proposed rulemaking cross-referencing the 2014 temporary coordination regulations was published in the **Federal Register** on March 6, 2014 (79 FR 12880).

Comments were received in response to the 2014 temporary coordination regulations, but no public hearing was requested, and none was held. In response to comments, and after further consideration, this document includes final and temporary regulations that revise and clarify certain sections of the 2014 temporary coordination regulations. In some cases, the changes to the 2014 temporary coordination regulations contained in these final and temporary chapter 3 regulations are made to coordinate with final and temporary regulations issued under chapter 4 that are being published in the **Federal Register** concurrently with this document. Certain provisions of these final and temporary chapter 3 regulations were previewed in notices published after the publication of the 2014 temporary coordination regulations. See Notice 2014–33, 2014–21 I.R.B. 1033; Notice 2014–59, 2014–44 I.R.B. 747; and Notice 2016–42, 2016–19 I.R.B. 67. In addition, some changes in these final regulations are corrections of minor errors in the 2014 temporary coordination regulations. Additional unsolicited comments were received regarding the final chapters 3 and 61 regulations. These comments are not discussed herein, except where changes have been made in response thereto.

Summary of Comments and Explanation of Revisions and Provisions

A. Comments and Changes to § 1.1441–1—Requirement for the Deduction and Withholding of Tax on Payments to Foreign Persons

1. U.S. Branch Treated as a U.S. Person

Section 1.1441–1T(b)(2)(iv)(A) of the 2014 temporary coordination regulations provides that a U.S. branch of a foreign person that is a participating FFI, registered deemed-compliant FFI, or NFFE may agree to be treated as a U.S. person. In connection with changes in the chapter 4 regulations published concurrently with these regulations, the final regulations remove the requirement that the foreign person of which the U.S. branch is a part have a specified chapter 4 status. Additionally, the requirements for a withholding certificate from a U.S. branch that agrees to be treated as a U.S. person in § 1.1441–1(e)(3)(v)(A) have been modified to remove the requirement that the U.S. branch certify to the chapter 4

status of the foreign person of which the U.S. branch is a part.

2. Presumption of Foreign Status of an Entity Based on Documentary Evidence or GIIN

Section 1.1441–1T(b)(3)(iii)(A) of the 2014 temporary coordination regulations provides presumption rules for payments made to exempt recipients. Comments requested that if a withholding agent or payor makes a payment (other than a withholdable payment) to an entity payee that is an exempt recipient and has not received a valid withholding certificate but instead has documentary evidence such as a certificate of incorporation indicating that the payee is a foreign person, the withholding agent or payor should be able to presume, based on the documentary evidence, that the payee is a foreign person. The Treasury Department and the IRS decline to adopt this recommendation because the application of such a presumption rule would be limited in scope (given that withholding agents can choose to apply the rules of § 1.1441–1(b)(3)(iii)(A)(*2*), which are generally applicable to withholdable payments, to all payments with respect to an obligation) and because of concerns about the application of the suggested presumption rule in the case of foreign partnerships in which non-exempt recipients are partners, and to which the presumption rules of § 1.1441–5(c)(1)(iii) apply.

Comments also requested that a withholding agent or payor should be able to presume that an undocumented entity payee is foreign if there is a Global Intermediary Identification Number (GIIN) on file for the payee and the payee's name appears on the IRS FFI List. The Treasury Department and the IRS have declined to adopt this suggestion. U.S. entities can obtain GIINs, and if they do, their names appear on the IRS FFI list, such as when they are acting as sponsoring entities for chapter 4 purposes. Thus, it would not be appropriate for a GIIN to support a presumption of foreign status without more evidence of such status.

3. Presumption of Foreign Status for Certain Entities on the per se List of Foreign Corporations

Under § 1.1441–1T(b)(3)(iii)(A)(*1*)(*iii*) of the 2014 temporary coordination regulations, a withholding agent must presume that an undocumented entity payee that is an exempt recipient is a foreign person if the name of the payee indicates that the entity is a type of entity that is on the per se list of foreign corporations in § 301.7701–2(b)(8)(i), unless the name contains the designation ''corporation'' or ''company'' (which, in itself, would not be indicative of foreign status). Comments have requested that, rather than excluding all exempt entity payees whose names include ''company'' or ''corporation'' for purposes of this presumption rule, the rule instead be modified to provide that for payees whose names contain these designations, foreign status should be presumed if the withholding agent has a document that reasonably demonstrates that the entity is incorporated in the relevant foreign jurisdiction on the per se list. The Treasury Department and the IRS agree that this modification is appropriate and have included it in these final regulations.

4. Reliance on Electronic Transmission of Certificates, Forms, and Documentation

Generally, a withholding agent must withhold at a 30% rate on any payment of an amount subject to withholding unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. § 1.1441–1(b)(1). The 2014 temporary coordination regulations allow a withholding agent to rely on a valid Form W–8 or documentary evidence received by facsimile or scanned and furnished by email unless the withholding agent knows that the person transmitting the withholding certificate or documentary evidence is not authorized to do so, effective for payments made after March 6, 2014. This effective date prevents withholding agents from relying upon scanned or faxed withholding certificates or documentary evidence pursuant to § 1.1441–1T(e)(4)(iv)(C) of the 2014 temporary coordination regulations for payments made on or before March 6, 2014. As a result, withholding agents must instead obtain ''hard copies'' of the original form or document in order to cure documentation failures for such payments, to the extent allowed under § 1.1441–1(b)(7)(ii). Comments have suggested that the effective date with respect to this provision be modified to allow withholding agents to rely upon forms or documentary evidence received by facsimile or scanned and sent by email after March 6, 2014, regardless of when the payment was made. The Treasury Department and the IRS agree that requiring hard copies of original documentation to cure documentation failures for payments made on or before March 6, 2014, but not for payments after that date, provides minimal benefits compared to the additional effort required for a withholding agent to obtain a hard copy of the documentation. Accordingly, these final regulations modify the effective date as it relates to this provision so that it applies to any open tax year. In addition, to correspond to other changes, § 1.1441–1T(e)(4)(iv)(C) of the 2014 temporary coordination regulations is redesignated as § 1.1441–1(e)(4)(iv)(D) in these final regulations.

5. Curing Late Documentation for Claims That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States

When a withholding agent fails to obtain documentation and fails to withhold at the time of payment, the withholding agent is allowed, under certain circumstances, to obtain a valid withholding certificate (and other certifications, as required) to support a reduced rate of withholding. A withholding agent may obtain valid documentation after the date of payment to establish that a reduced rate of withholding was appropriate when it meets the additional requirements under § 1.1441–1(b)(7)(ii) (as amended by the 2014 temporary coordination regulations).

The rules in § 1.1441–1T(b)(7)(ii) of the 2014 temporary coordination regulations establish when additional documentation is required and what the additional documentation is required to contain. These temporary regulations add § 1.1441–1T(b)(7)(ii)(B) with respect to late documentation for income that is effectively connected with the conduct of a trade or business in the United States (effectively connected income). Under this rule, the withholding certificate (in this case, Form W–8ECI) must be associated with a signed affidavit that states that the information and representations contained on the certificate were accurate as of the time of the payment and either (i) the beneficial owner has included the income on its U.S. income tax return for the taxable year in which the income must be reported, or (ii) the beneficial owner will include the income on its U.S. income tax return for the taxable year in which the income must be reported and the due date for filing the return (including any applicable extensions) is after the date on which the affidavit is signed.

This rule is added to ensure compliance with the requirement that the beneficial owner actually include the income on its income tax return for the taxable year in which the income is

required to be reported for U.S. tax purposes. Because the exemption for withholding on effectively connected income under section 1441(c)(1) applies only when the income is included in the gross income of the recipient, the Treasury Department and the IRS have decided it is appropriate for a withholding agent that receives a late Form W–8ECI to obtain the aforementioned affidavit. A corresponding change has been made to the temporary regulations under chapter 4 that are being published concurrently with these regulations to address circumstances when a withholding agent may rely on a Form W–8ECI provided after the date of a payment to claim that the payment is effectively connected income (and thus is not a withholdable payment under § 1.1473–1(a)(5)(ii)).

6. Nonresident Alien Individuals and Dual Residents

A U.S. person is defined by reference to section 7701(b). The definition of nonresident alien individual in the chapter 3 regulations does not specify the exact circumstances under which a dual resident of the United States and another jurisdiction will be treated as a nonresident alien individual under an applicable income tax treaty and § 301.7701(b)–7. These temporary regulations therefore clarify that an individual will not be treated as a U.S. person for a taxable year (or any portion thereof) for which he or she is a dual resident taxpayer who is treated as a nonresident alien pursuant to § 301.7701(b)–7 for purposes of computing his or her U.S. tax liability. A corresponding change has also been made to the definition of a U.S. person in the chapter 4 regulations that are being published concurrently with these regulations.

7. Hold Mail Instruction

The 2014 temporary coordination regulations provide that an address that is provided subject to instructions to hold all mail to that address is not considered a permanent residence address; the same rule is provided in the 2013 final chapter 4 regulations. Comments have requested that the definition of permanent residence address be modified to treat an address subject to a hold mail instruction as a permanent residence address if additional documentation is provided. The Treasury Department and the IRS agree that a hold mail instruction should not prevent persons from being able to verify that they have a permanent residence address by providing appropriate additional documentary evidence that supports their residency in the foreign jurisdiction where they are claiming to be resident. These temporary regulations thus revise the definition of ''permanent residence address'' in § 1.1441–1T(c)(38) to add that an address that is subject to a hold mail instruction can be relied upon as a permanent residence address if the person provides documentary evidence (as described in § 1.1441–1(c)(17)) establishing the person's residence in the country where the person is claiming to be resident. These revisions also provide that if a hold mail instruction is provided to a withholding agent after the withholding certificate was provided, this will be considered a change in circumstances requiring that additional documentary evidence be obtained in order to use the address on the withholding certificate as a permanent residence address.

8. Revisions to Nonqualified Intermediary Withholding Statement for U.S. Payee Pool

Under § 1.1441–1(e)(3)(iv), a withholding statement provided by a nonqualified intermediary may include an allocation of a payment to a chapter 4 withholding rate pool of U.S. payees when the requirements of that paragraph are satisfied, and a similar allowance is provided for an FFI withholding statement provided by a nonqualified intermediary in the case of a withholdable payment for chapter 4 purposes. A chapter 4 withholding rate pool of U.S. payees is defined as a pool of payees described in either § 1.1471–3(c)(3)(iii)(B)(*2*)(*ii*) or (*iii*) (with § 1.1471–3(c)(3)(iii)(B)(*2*)(*ii*), as revised in the final chapter 4 regulations, being published concurrently with these regulations). See the preamble to the final chapter 4 regulations for background on this revision. Payees described in § 1.1471–3(c)(3)(iii)(B)(*2*)(*ii*) consist of account holders receiving payments not subject to withholding under chapter 3 or 4 or under section 3406 that are either (1) holders of non-consenting U.S. accounts maintained by a reporting Model 2 FFI, or (2) holders of accounts with U.S. indicia maintained by a reporting Model 1 FFI for which appropriate documentation sufficient to treat the account holders as other than U.S. persons has not been provided to the FFI. Payees described in § 1.1471–3(c)(3)(iii)(B)(*2*)(*iii*) consist of account holders of an FFI that is a non-U.S. payor for chapter 61 purposes that are account holders not subject to withholding under chapter 3 or chapter 4 or under section 3406 and that are also: (1) Holders of U.S. accounts that the FFI reports as U.S. accounts pursuant to § 1.1471–4(d)(3) or (5) for the year in which the payment is made, (2) holders of U.S. accounts that the FFI reports pursuant to the conditions of its applicable deemed-compliant status under § 1.1471–5(f)(1) for the year in which the payment is made, or (3) holders of U.S. accounts that a reporting Model 1 FFI reports as reportable U.S. accounts pursuant to an applicable Model 1 IGA, and which includes the U.S. taxpayer identification numbers (TINs) of such account holders, for the year in which the payment is made. Although an allocation of a payment to a payee described in § 1.1471–3(c)(3)(iii)(B)(*2*)(*ii*) (as revised in the final chapter 4 regulations being published concurrently with these regulations) is not permitted for a payment subject to chapter 3 withholding, no such limitation applies under § 1.1471–3(c)(3)(iii)(B)(*2*)(*iii*) for a payment that is allocable to U.S. accounts (or reportable U.S accounts) that are maintained by a non-U.S. payor and subject to comprehensive reporting (which includes the U.S. TINs of such account holders) under FATCA or an applicable IGA. As a result, these final regulations add a requirement that a withholding agent may not treat as valid an allocation of a payment subject to chapter 3 withholding to a withholding rate pool of U.S. payees that a nonqualified intermediary does not identify as described in § 1.1471–3(c)(3)(iii)(B)(*2*)(*iii*) (by citing to § 1.1471–3(c)(3)(iii)(B)(*2*)(*iii*) or describing the payees consistent with that paragraph). To allow withholding agents time to amend their procedures for validating withholding statements provided by nonqualified intermediaries, this requirement applies only to payments made on or after April 1, 2018.

9. Alternative Withholding Statement of a Nonqualified Intermediary

Section 1.1441–1T(e)(3)(iv)(C) of the 2014 temporary coordination regulations prescribes the information required to be included on a withholding statement provided by a nonqualified intermediary (NQI), such as the name, address, TIN (if any), and type of documentation received by the NQI for each payee. Comments have requested that NQIs be permitted to provide, and withholding agents be permitted to rely on, simplified withholding statements that do not include all of the information specified in § 1.1441–1T(e)(3)(iv)(C) of the 2014 temporary coordination regulations. These comments noted that withholding

agents are required to independently verify the information provided on the NQI withholding statement by reviewing and validating the beneficial owner withholding certificates that accompany the NQI's Form W–8IMY. Accordingly, the comments requested that withholding agents not be required to invalidate a withholding statement that does not provide all of the information specified in § 1.1441–1T(e)(3)(iv)(C) of the 2014 temporary coordination regulations when that information can be found on the beneficial owner withholding certificate. The Treasury Department and the IRS agree with this recommendation, and these temporary regulations add § 1.1441–1T(e)(3)(iv)(C)(*3*) to provide a new rule allowing a withholding agent to rely on an alternative withholding statement received from an NQI to the extent that the NQI provides the withholding agent with beneficial owner withholding certificates (and not only with documentary evidence). The alternative withholding statement is not required to include information that is also included on the withholding certificates and is not required to specify the rate of withholding applicable to each payee, as long as the withholding agent can determine the appropriate rate from the information on the withholding certificates. Additional requirements include that the alternative withholding statement contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapters 3, 4, and 61, and section 3406, and that the NQI certify that none of the information on the beneficial owner withholding certificates is inconsistent with information in the NQI's files. For example, under this alternative withholding statement rule, if a withholding agent is making a payment to a foreign partnership (that is not a withholding foreign partnership) and has partners who are all foreign individuals, the withholding agent can choose to accept a Form W–8IMY from the foreign partnership that is associated with Forms W–8BEN from all of its partners. The foreign partnership would provide the withholding agent with, in addition to its Form W–8IMY and the Forms W–8BEN, a withholding statement indicating the appropriate allocation among the partners and a representation that none of the information on the Forms W–8BEN is inconsistent with what the foreign partnership has in its files. However, if, for example, the foreign partnership has information in its files for one of the foreign partners such that it would be unable to rely on the withholding certificate under the rules of § 1.1441–7, the foreign partnership would not be able to provide the representation, and the withholding agent would not be allowed to rely on an alternative withholding statement.

10. Indefinite Validity of Documentation

Section 1.1441–1T(e)(4)(ii)(B)(*1*) of the 2014 temporary coordination regulations requires that documentary evidence be provided at the same time as a withholding certificate provided by an individual to support a claim of foreign status in order for the withholding certificate to remain valid indefinitely. Commenters have noted that documentary evidence and withholding certificates are often not provided at the same time, and therefore the rule should be more flexible regarding the timing of when these documents must be obtained. The Treasury Department and the IRS agree that the meaning of ''provided together'' should be clarified. These final regulations specify that ''provided together'' means that a withholding certificate and the documentary evidence must be received within 30 days of one another, regardless of which is received first. The Treasury Department and the IRS do not believe it is appropriate to allow the documentary evidence to be provided at any point before the expiration of the withholding certificate because of the risk of changes in an individual's status or residency over a three-year period. In addition, account opening procedures are generally performed within a 30-day period. See § 1.1441–7(b)(2). Corresponding changes have also been made to the chapter 4 regulations that are being published concurrently with these regulations.

In addition, § 1.1441–1T(e)(4)(ii)(B)(*2*) of the 2014 temporary coordination regulations provides that a withholding certificate (other than the portion relating to a claim for treaty benefits) described in § 1.1471–3(c)(6)(ii)(C)(*2*) and documentary evidence provided by an entity supporting the entity's claim of foreign status are valid indefinitely if they are provided together. Similar to comments on withholding certificates provided by individuals, comments on withholding certificates provided by entities noted challenges with respect to the ''provided together'' requirement. In response to these comments, the final regulations remove the phrase ''provided together'' and instead provide that a withholding certificate provided by an entity (that is, a Form W–8BEN–E) (other than the portion relating to a claim for treaty benefits) accompanied by documentary evidence will be valid indefinitely if the withholding agent receives both before either the withholding certificate or the documentary evidence would otherwise expire (even if the withholding certificate and documentary evidence are not provided simultaneously). The Treasury Department and the IRS believe it is appropriate to have different standards for documentation received from individuals and entities in this respect because it is less common for entities to change their statuses within a three-year period. In addition, comments noted that the applicability of this rule in the 2014 temporary coordination regulations, limited to the withholding certificates described in § 1.1471–3(c)(6)(ii)(C)(*2*), is too narrow. The Treasury Department and the IRS agree; accordingly, these final regulations remove the cross-reference to § 1.1471–3(c)(6)(ii)(B). However, these final regulations cross-reference the indefinite validity rules in § 1.1471–3(c)(6)(ii) that apply for chapter 4 purposes.

11. Treaty Statements Provided With Documentary Evidence

Under the chapter 3 regulations, a withholding agent may apply a reduced rate of withholding under section 1441, 1442, or 1443 on a payment to a foreign entity in certain cases under the terms of an income tax treaty if the person represents that the payment is treated as derived by a resident of the applicable treaty jurisdiction and all of the other requirements for benefits under the applicable treaty are satisfied. A withholding certificate provided by an entity that is claiming reduced withholding under an income tax treaty must contain a statement that the treaty claimant meets the limitation on benefits requirement, if any, under the treaty. Because entitlement to a reduced rate of withholding under a treaty is conditioned on the beneficial owner satisfying limitation on benefits provisions, the requirement for a beneficial owner to provide a treaty statement helps ensure that beneficial owners understand the relevant treaty provisions and qualify for the claims they are making. Under the chapter 3 regulations, a treaty statement provided on a Form W–8BEN–E expires on the last day of the third calendar year following the date the form was signed, but a treaty statement provided with documentary evidence remains valid indefinitely (unlike the documentary evidence itself in most cases). In order to enhance the reliability and increase the accuracy of the claims, to help assure that information is updated when

ownership thresholds or activity requirements in a particular treaty have changed, and to have a consistent validity period regardless of how a treaty statement is provided, these temporary regulations provide that a treaty statement regarding limitation on benefits that is associated with documentary evidence will remain valid until the last day of the third calendar year following the year in which the statement is provided to the withholding agent. For existing accounts that were documented with documentary evidence before the date of publication of these temporary regulations, the treaty statements will expire on January 1, 2019.

12. Electronic System for Form 8233

Section 1.1441–1T(e)(4)(iv)(A) of the 2014 temporary coordination regulations allows a withholding agent to establish an electronic system to collect Forms W–8 (or any other form as the IRS may prescribe) from a beneficial owner or payee. Comments requested that withholding agents be allowed to establish such an electronic system for collecting Forms 8233, ''Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.'' The Treasury Department and the IRS accept this request and have added § 1.1441–1T(e)(4)(iv)(C) to provide the requirements for the system.

13. Electronic Signatures

Comments requested that the regulations be amended to allow a withholding agent to accept a Form W–8 with an electronic signature when the withholding agent has not developed and maintained an electronic collection system described in § 1.1441–1(e)(4)(iv)(B). The Treasury Department and the IRS have determined that valid electronically signed withholding certificates may be accepted by a withholding agent if the withholding certificates reasonably demonstrate to the withholding agent that they have been electronically signed by the recipient identified on the form or a person authorized by the recipient to sign the form (by, for example, a signature block that includes a time and date stamp and a statement that the certificate has been electronically signed and the name of the person authorized to sign the form). If the withholding certificate contains only a typed name in the signature line and no other information regarding the method of signature, a withholding agent cannot treat the withholding certificate as validly signed. These temporary regulations reflect this change. A coordinating change is also being made to the chapter 4 regulations.

14. Authentication of Forms and Documentary Evidence Received by Facsimile or Email

Comments requested more detailed guidance on how a withholding agent could authenticate and verify a form or documentary evidence received by facsimile or email, for example by obtaining an authorization letter from the person who signed the form. The Treasury Department and the IRS have not provided prescriptive guidance on the procedures that must be used for this purpose, in part because the standard under § 1.1441–1(e)(4)(iv)(D) (§ 1.1441–1T(e)(4)(iv)(C) of the 2014 temporary coordination regulations) for a withholding agent with respect to whether a form was provided by someone authorized to provide the form is an actual knowledge standard (that is, the withholding agent must not have actual knowledge that the form was transmitted by a person not authorized to do so by the person required to execute the form). The Treasury Department and the IRS believe that the current regulations offer sufficient flexibility for withholding agents to develop the necessary procedures for authenticating and verifying that the form was transmitted to the withholding agent by a person who was authorized to do so without the need for further guidance.

15. Withholding Certificates and Documentary Evidence Furnished Through a Third Party Repository

Comments have requested clarification of guidance provided in the Frequently Asked Questions (FAQ) on the IRS Web site (see *https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal*) regarding when withholding agents may rely on withholding certificates obtained from third-party repositories; specifically, clarification was requested that the principles for the appropriate use of a third-party repository outlined in the FAQ would extend to all Forms W–8. The Treasury Department and the IRS have included in these temporary regulations guidance regarding the circumstances under which a Form W–8 (and, in certain circumstances where applicable, a withholding statement) maintained by a third-party repository will be considered furnished to the withholding agent by the person whose name is on the certificate. See § 1.1441–1T(e)(4)(iv)(E).

16. Reliance on Prior Versions of Withholding Certificates

The 2014 temporary coordination regulations allow a withholding agent to continue to accept the prior version of a withholding certificate that has been revised for a period of six months after the date of release of the revised withholding certificate. Comments noted that this period may be difficult for withholding agents to comply with, depending on when the revised version of the form is released and how extensive the revisions are. Comments also noted challenges in coordinating this requirement with the renewal requirements for withholding certificates, which expire as of the end of a calendar year. The Treasury Department and the IRS agree that it is appropriate to extend the period during which prior versions of withholding certificates may be used beyond six months. These final regulations provide that withholding agents generally may use prior versions of withholding certificates until the later of six months after the date of issuance of the most recent revision to the withholding certificate, or the end of the calendar year during which the revised version was issued. However, in certain circumstances, such as when a new status must be established on the withholding certificate because of a new requirement in the regulations, the Treasury Department and the IRS may designate a shorter transition period.

17. Revisions Related to Qualified Intermediaries

On July 1, 2016, in Notice 2016–42, 2016–29 I.R.B. 67, the Treasury Department and the IRS released the proposed Qualified Intermediary (QI) agreement (the Proposed QI Agreement), which, once finalized, would be effective on or after January 1, 2017. In response to comments received following the publication of the QI agreement (the 2014 QI Agreement) in 2014 in Rev. Proc. 2014–39, 2014–29 I.R.B. 150, the Proposed QI Agreement provided more detailed compliance and review procedures for QIs, requirements applicable to qualified derivatives dealers, and other revisions and corrections. These temporary and final regulations include several revisions that align with the Proposed QI Agreement. These final regulations clarify the rule already provided in the 2014 temporary coordination regulations that when a QI is a participating FFI or a registered deemed-compliant FFI for purposes of chapter 4, it may represent that it assumes chapter 61 reporting

responsibilities (and reports accordingly) when it reports its U.S. accounts in accordance with the coordination rules of § 1.6049–4(c)(4). These regulations also clarify that, in certain cases, for purposes of the alternative procedures for allocating payments to U.S. non-exempt recipients on withholding statements described in the QI agreement, QIs may, as provided in the QI agreement, include a chapter 4 withholding rate pool of U.S. payees in the same zero-rate pool as foreign persons that are exempt from chapter 3 withholding.

Section 1.1441–1T(e)(5)(ii) of the 2014 temporary coordination regulations lists the types of entities that are eligible to enter into QI agreements, including foreign corporations that are presenting claims of treaty benefits on behalf of their shareholders. In Notice 2016–42, the Treasury Department and the IRS requested comments on the situations where a foreign corporation (other than a reverse hybrid entity) would be seeking to act as a QI on behalf of its shareholders, and questioned why the withholding foreign partnership agreement does not accommodate such situations. No comments were received in response to this request. As a result, and because § 1.1441–1(e)(5)(ii)(D) provides that ''any person acceptable to the IRS'' may be eligible to be a QI, these final regulations remove from the list of prospective QIs the specific category of foreign corporations presenting treaty benefit claims on behalf of their shareholders.

18. Requirement for a Withholding Agent to Collect Foreign Taxpayer Identification Number (Foreign TIN)

Form W–8BEN and the instructions to the form describe circumstances under which a foreign person is required to provide a foreign TIN or date of birth on the form. Similarly, Form 1042–S and the instructions to the form outline circumstances under which a withholding agent is required to report such information. These temporary regulations provide that, starting January 1, 2017, for an account maintained at a U.S. office or branch of a withholding agent that is a financial institution, the withholding agent will be required to collect the account holder's foreign TIN, and, in the case of an individual account holder, the account holder's date of birth, on a withholding certificate. A withholding certificate that does not contain a date of birth but is otherwise valid will not be invalid if the withholding agent has such information in its files. For withholding certificates associated with payments made on or after January 1, 2018, a foreign person that does not have a foreign TIN must provide a reasonable explanation as to the lack of a foreign TIN (for example, that the country of residence does not provide TINs).

B. Changes to § 1.1441–2—Amounts Subject To Withholding—Withholding on United States Source Gross Transportation Income

Under section 887(a), gross income derived by a nonresident individual or foreign corporation that constitutes United States source gross transportation income (USSGTI) is subject to a four-percent tax, and is not subject to tax under section 871, 881, or 882. For these purposes, USSGTI consists of income derived from, or in connection with, (1) the use (or hiring or leasing for use) of a vessel or aircraft or (2) the performance of services directly related to the use of a vessel or aircraft, to the extent the income is treated as derived from U.S. sources under section 863(c)(2). USSGTI does not include such income, however, if it is effectively connected with the trade or business in the United States of a nonresident alien or foreign corporation, within the meaning of section 887(b)(4), nor does it include income taxable in a possession of the United States under the provisions of the Code as made applicable in such possession. Items of income that are not USSGTI, as defined in section 887(b), are not affected by the change to the regulations described in this section, and the normal income tax rules apply.

Under sections 1441 and 1442, items of gross income from U.S. sources paid to nonresident individuals and foreign corporations may be subject to withholding at a 30-percent rate if such items are ''amounts subject to withholding'' within the meaning of § 1.1441–2. In general, under § 1.1441–2(a), the term ''amounts subject to withholding'' is broadly defined to include amounts from sources within the United States that constitute fixed or determinable annual or periodical income, which in turn is defined to include all income included in gross income under section 61 subject to certain exceptions. Given the broad definition of ''amounts subject to withholding'' and the lack of a specific exception for USSGTI, taxpayers have questioned whether amounts paid that constitute USSGTI are subject to withholding under section 1441 or 1442 at a 30-percent rate, notwithstanding that, under section 887(a), a four-percent tax is imposed on a nonresident alien individual or foreign corporation's USSGTI for the taxable year.

Because USSGTI is not subject to section 871 or 881 gross basis tax if section 887(a) applies, it is not an amount subject to withholding under section 1441 or 1442. The temporary regulations clarify this result under § 1.1441–2T(a)(8) by providing that amounts subject to withholding under section 1441 or 1442 do not include gross income of a nonresident alien or foreign corporation that is taxable under section 887(a) at four percent. Comments are requested regarding documentation requirements for applying this exception.

C. Comments and Changes to § 1.1441–3—Determination of Amounts To Be Withheld–Coordination With Withholding Under Section 1445 as Amended by the PATH Act

The regulations in § 1.1441–3 include rules for coordinating with section 1445 in the case of distributions from qualified investment entities and United States real property holding companies. Section 1445(a) generally imposes a withholding tax obligation on the transferee when a foreign person disposes of a United States real property interest. Before the enactment of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2422, the withholding rate under the relevant provisions of section 1445 was 10 percent of either the amount realized or the fair market value of the interest, as applicable. The PATH Act generally increased the withholding rate under section 1445 from 10 percent to 15 percent for dispositions occurring after February 16, 2016 (with certain exceptions for acquisitions of residences). These final regulations incorporate the PATH Act's rate change for these dispositions when referenced in § 1.1441–3.

D. Comments and Changes to § 1.1441–4—Exemptions from Withholding for Certain Effectively Connected Income and Other Amounts—Form 8233 TIN Requirement

Compensation for personal services paid to a nonresident alien individual is not subject to withholding under section 1441 if the compensation is effectively connected with the conduct of a trade or business in the United States and is exempt from U.S. federal income tax under an income tax treaty. In order for a nonresident alien individual to claim treaty benefits for reduced withholding, the chapter 3 regulations require that he or she provide a Form 8233 that includes a TIN or proof that an

application for a TIN has been filed. Comments requested that individuals in these circumstances be exempt from the requirement to include a TIN on the Form 8233. The Treasury Department and the IRS decline to accept this request because these individuals also generally have an obligation to file a Form 1040NR to claim the exemption from tax provided by the income tax treaty and must have a TIN to file the Form 1040NR. The requirement that the TIN (or proof of application for a TIN) also be provided on the Form 8233 therefore does not place an additional burden on these individuals and helps ensure appropriate treaty benefits are provided.

E. Comments and Changes to § 1.1441–6—Claim of Reduced Withholding Under an Income Tax Treaty

1. Form W–8BEN–E and Limitation on Benefits Requirements

In April 2016, the IRS released a revised Form W–8BEN–E, ''Certification of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities),'' and revised instructions, which require an entity claiming treaty benefits to identify the specific type of limitation on benefits provision that the entity meets to be eligible to claim benefits under the treaty (for example, the publicly traded test or the stock ownership and base erosion test, the active trade or business test, etc.). These temporary regulations modify the chapter 3 regulations, consistent with the revised Form W–8BEN–E and instructions, to require that a limitation on benefits statement on Form W–8BEN–E identify the specific limitation on benefits provision on which the taxpayer is relying to claim treaty benefits. This revision to the form and the chapter 3 regulations will further improve the compliance of treaty claimants with the specific requirements of the applicable limitation on benefits provisions in the treaty pursuant to which they seek at-source relief from chapter 3 withholding.

Comments requested that more guidance be provided on when a payee's limitation on benefits claim is unreliable or incorrect. Accordingly, these temporary regulations provide that a withholding agent may rely on a valid Form W–8BEN–E that includes limitation on benefits information unless it has actual knowledge that the information provided with respect to the limitation on benefits is unreliable or incorrect. Withholding agents are generally expected to report this information beginning in 2018.

Under the chapter 3 regulations, a withholding agent may, in certain circumstances, use documentary evidence to document a payee and reduce the rate of withholding if the withholding agent obtains a treaty statement that the payee meets the limitation on benefits provision contained in the applicable income tax treaty. These temporary regulations provide, consistent with the requirements for withholding certificates, that the treaty statement associated with documentary evidence to support a treaty claim must also identify the specific limitation on benefits provision on which the entity relies to claim benefits under the applicable income tax treaty.

2. Reason To Know That a Treaty is in Force

More generally, these temporary regulations also clarify a withholding agent's responsibility with respect to claims of benefits under an income tax treaty, whether they are made by an individual or an entity. By way of example, these temporary regulations provide that if the income tax treaty that the treaty claimant references on the form does not exist or is not in force (which a withholding agent can determine by consulting the list of jurisdictions with which the United States has an income tax treaty in force maintained on the IRS Web site, or the State Department's *Treaties in Force* publication), a withholding agent will have reason to know that the information provided on the Form W–8BEN–E is incorrect and the form is therefore not valid for purposes of claiming treaty benefits.

F. Comments and Changes to § 1.1441–7—General Provisions Relating To Withholding Agents

1. Curing of U.S. Indicia

Under § 1.1441–7(b), a withholding agent must withhold at the full 30-percent rate if it has actual knowledge or reason to know that a payee's claim of U.S. status or of entitlement to a reduced rate of withholding is unreliable or incorrect. Comments requested that a withholding agent should be able to presume that an undocumented entity payee is a foreign person if the withholding agent has on file for the payee a GIIN and confirms that the payee's name and GIIN appear on the IRS FFI list. These comments noted that under § 1.1471–3(e)(4)(ii)(B), for chapter 4 purposes, a withholding agent can reliably associate a withholding certificate with a payment to a participating FFI, a registered deemed-compliant FFI, a sponsoring entity, or a sponsored FFI without applying the rules of § 1.1441–7(b)(5) (relating to when a withholding agent has reason to know that a withholding certificate is unreliable or incorrect due to the presence of U.S. indicia) if the withholding agent has confirmed the entity's GIIN on the current published FFI list. The Treasury Department and the IRS have declined to adopt this suggestion. Because U.S. entities can obtain GIINs, and if they do so, their names would appear on the IRS FFI list (as is the case for U.S. entities that are sponsoring entities, for example), it is not appropriate to allow a GIIN to cure U.S. indicia for purposes of chapter 3.

2. Modification of Applicability Date for Revised Standards of Knowledge as Previewed in Notice 2014–33

The 2014 temporary coordination regulations revised the standards of knowledge regarding additional U.S. indicia that will cause a withholding agent to have reason to know that a payee's claim of foreign status is unreliable or incorrect for purposes of chapter 3 or 61 to coordinate with the standards of knowledge that apply for purposes of chapter 4. These revised standards of knowledge generally do not require a withholding agent to take the additional U.S. indicia into account for a preexisting obligation of a direct account holder if the foreign status of the account holder was documented by the withholding agent for purposes of chapter 3 or chapter 61 before July 1, 2014. On May 19, 2014, Treasury and the IRS published Notice 2014–33, 2014–21 I.R.B. 1033, which, among other things, generally allowed a withholding agent or FFI to treat an obligation held by an entity that was issued, opened, or executed on or after July 1, 2014, and before January 1, 2015, as a preexisting obligation described in §§ 1.1471–2(a)(4)(ii), 1.1472–1(b)(2), and 1.1471–4(c)(3). Following the publication of Notice 2014–33, comments noted that, while the modifications made to § 1.1441–7(b) addressed the application of the revised reason to know standards for obligations that were documented by a withholding agent before July 1, 2014, Notice 2014–33 did not address how the standards would apply to entity accounts opened on or after July 1, 2014, and before January 1, 2015, that are treated as preexisting obligations by withholding agents and participating FFIs for purposes of chapter 4, pursuant to Notice 2014–33. These comments requested that a similar modified applicability date be added to § 1.1441–7(b) to allow withholding agents to treat

an entity account opened during the transition period between July 1, 2014, and January 1, 2015 as a preexisting entity account for purposes of the standards of knowledge applicable to accounts under chapters 3 and 61. Accordingly, these final regulations allow withholding agents to apply the rules under § 1.1441–7(b)(5) and (b)(8) as in effect and contained in 26 CFR part 1 revised April 1, 2013, to accounts opened, and obligations entered into, by an entity on or after July 1, 2014, and before January 1, 2015. In addition, these final regulations provide that, with respect to an obligation held by an entity, a withholding agent will not be required to treat the existence of the additional U.S. indicia specified in § 1.1441–7(b) as giving rise to a change in circumstances under § 1.1441–1(e)(4)(ii)(D) before January 1, 2015. These changes to the chapter 3 regulations were previewed in Notice 2014–59, 2014–44 I.R.B. 747.

3. Indicia of U.S. Status on Form W–8ECI

The 2014 temporary coordination regulations describe the U.S. indicia that will cause a withholding agent to have reason to know that a withholding certificate is unreliable or incorrect for purposes of establishing the account holder's status as a foreign person. Comments have noted that foreign persons that have a trade or business in the United States are likely to have U.S. indicia; therefore, the existence of U.S. indicia on a Form W–8ECI should not cause the withholding agent to have reason to know that the Form W–8ECI is unreliable or incorrect. The Treasury Department and the IRS agree. These final regulations reflect this change by providing that the existence of U.S. indicia on a Form W–8ECI will not cause a withholding agent to have reason to know that the form is unreliable or incorrect for purposes of establishing the account holder's status as a foreign person.

4. Reason to Know—Specific Standards of Knowledge Applicable to Documentation Received from Intermediaries and Flow-Through Entities

The chapter 3 regulations permit a withholding agent to accept a Form W–8 (or a substitute Form W–8) electronically through a system established by the withholding agent that meets the requirements described in § 1.1441–1(e)(3)(iv)(B). Announcement 98–27, 1998–1 C.B. 865, and Announcement 2001–91, 2001–2 C.B. 221, provide similar requirements for an electronic system established by a withholding agent to receive a Form W–9. Comments requested that specific guidance be given to clarify that a withholding agent is allowed to rely on documentation provided to it by an intermediary or flow-through entity that has established an electronic system to collect documentation from a payee. The primary concern raised in these comments was how a withholding agent was supposed to validate, and whether a withholding agent could rely on, a signature on a beneficial owner withholding certificate received through an electronic system. In Notice 2016–08, 2016–6 I.R.B 304, the Treasury Department and the IRS announced an intent to modify the standards of knowledge under §§ 1.1441–7(b)(10) and 1.1471–3(e)(4)(vi)(A)(*2*) to allow a withholding agent to rely on a withholding certificate collected through an electronic system maintained by a nonqualified intermediary, nonwithholding foreign partnership, or nonwithholding foreign trust. However, in light of the new provisions in § 1.1441–1T(e)(4)(i)(B) describing when withholding agents may accept withholding certificates signed electronically, the Treasury Department and the IRS have determined that it is not necessary to modify the standards of knowledge for payments to intermediary and flow-through entities as previewed in Notice 2016–08.

5. Authorized Agents and Form 8655

Under the 2014 temporary coordination regulations, a withholding agent must file Form 8655, ''Reporting Agent Authorization,'' with the IRS if it appoints an agent to act as its reporting agent for filing Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' or making tax deposits and payments with respect to Form 1042. A comment suggested that a Form 8655 should be required to be filed only when an agent files a Form 1042 in its own name (and under its own EIN) on behalf of one or more other withholding agents. In response to the comment, these final regulations amend the 2014 temporary coordination regulations to provide that a withholding agent must file a Form 8655 only when its agent files a Form 1042 as the filer on behalf of one or more other withholding agents. This revision is also included in temporary regulations under chapter 4 that are being published concurrently with these temporary and final regulations.

G. Comments and Changes to § 1.1461–1—Payment and Returns of Tax Withheld

1. Electronic Furnishing of Form 1042–S

The chapter 3 regulations generally require withholding agents to file an information return on Form 1042–S to report the amounts subject to reporting that were paid during the preceding calendar year and to provide a copy of the form to the recipient of the payment, on or before March 15 of the calendar year following the payment. The withholding agent must retain a copy of each Form 1042–S for the period corresponding to the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042–S relates. The Treasury Department and the IRS have determined that it is appropriate to allow withholding agents to furnish the recipient copy of the Form 1042–S electronically under the same conditions applicable to furnishers of recipient copies of other forms (for example, Form W–2, Form 1099–K), and for this reason, these final regulations include a cross-reference to the requirements under § 1.6050W–2 for certain information statements that are furnished electronically. Statements can be furnished electronically beginning in calendar year 2017 for payments made in calendar year 2016 that are reportable on Form 1042–S.

2. Provision of Foreign TINs on Recipient Copies of Form 1042–S

The Form 1042–S requires, among other information, the foreign TIN of a recipient if (A) the recipient is claiming a reduced rate of, or exemption from, tax under a tax treaty, the person did not provide a U.S. TIN, and the income is not the type of income for which an exemption from the U.S. TIN requirement applies; (B) the recipient receives a payment made with respect to an obligation maintained at a U.S. office or branch of the withholding agent, the withholding agent is a financial institution, and the foreign TIN is available in the withholding agent's electronically searchable information; or (C) the withholding agent is required to collect the foreign TIN on the Form W–8. Comments have requested that the form instructions or the chapter 3 regulations be modified to allow a foreign TIN to be truncated on the recipient copy of the Form 1042–S consistent with the truncation of U.S. TINs on the Form 1042–S. The Treasury Department and the IRS agree with these comments and will modify the Form 1042–S instructions accordingly.

H. Comments and Changes to § 1.6041–4—Foreign-Related Items and Other Exceptions—Definition of ''Paid and Received Outside the United States''

Under § 1.6041–4, returns of information are not required for payments of certain amounts from sources outside the United States that are paid by a non-U.S. payor or a non-U.S. middleman and that are paid and received outside the United States. Section 1.6049–4(f)(16) describes the circumstances under which a payment is considered ''paid and received outside the United States'' (and is therefore not a reportable payment). Comments have suggested that the definition of ''paid and received outside the United States'' be limited to allow a broader range of payments to be treated as reportable payments, such as payments for services performed outside the United States. The Treasury Department and the IRS continue to consider this issue but have not incorporated this suggestion into these temporary and final regulations.

I. Comments and Changes to § 1.6042–2 and § 1.6045–1—Returns of Information as to Dividends Paid and Brokers and Barter Exchanges—Extended Period of Validity for PFIC Statements

Under § 1.6042–2, every person who makes a payment of dividends to any other person during a calendar year must file an information return (that is, Form 1099) that contains the aggregate amount of the dividends, identifying information about the payee, the amount of tax deducted and withheld under section 3406, and such other information as the form requires. The 2014 temporary coordination regulations provide an exception to this filing requirement for payments made by a paying agent on behalf of a passive foreign investment company (PFIC), as defined in section 1297(a), with respect to a shareholder in the PFIC if, among other things, the paying 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 exception is to be applied, and the paying agent has no reason to know that the written certification is unreliable or incorrect. The paying agent must also identify, before payment, that the PFIC is a participating FFI or a reporting Model 1 FFI, and must obtain annually a written certification from the PFIC representing that it will report payments made by the paying agent pursuant to its reporting obligations under chapter 4 or under an applicable intergovernmental agreement (IGA).

Comments have requested that, rather than obtaining an annual certification that is signed by an officer of the corporation, the paying agent should be able to rely on a single written certification of PFIC status until there is a change in circumstances or the paying agent knows or has reason to know that the certification is unreliable or incorrect, and that such certification can be signed by any person that has the authority to sign the certification on behalf of the corporation. The Treasury Department and the IRS decline to accept the request for a single written certification of PFIC status at this time because the annual certification requirement does not appear to present a significant compliance burden and helps assure that the paying agent is meeting its due diligence standards. However, the request that the certification be signed by any person that has the authority to sign the certification on behalf of the corporation has been accepted. A similar change has been made in § 1.6045–1(c)(3)(xiv)(A).

J. Comments and Changes to § 1.6049–5—Interest and Original Discount Subject To Reporting After December 31, 1982

1. Modification of Applicability Date for Use of Documentary Evidence With Respect to an Offshore obligation

The regulations under § 1.6049–5(c)(1) provide guidance on a payor's use of documentary evidence to establish a payee's foreign status for certain amounts paid outside the United States (as determined under § 1.6049–5(e)) with respect to an offshore obligation. The 2014 temporary coordination regulations included a series of modifications, made in coordination with modifications to regulations under chapter 4, to the conditions under which a withholding agent or a payor (as defined for chapter 61 purposes in § 1.6049–5(c)(5)) may rely on documentary evidence to document a payee's foreign status, and also provided guidance on when an amount is considered paid outside the United States. The 2014 temporary coordination regulations under § 1.6049–5T(c)(1) apply to payments made on or after July 1, 2014, except for certain payments made with respect to preexisting obligations, as described in § 1.1441–7(b)(3)(ii).

In response to requests to allow payors additional time to modify their systems to implement the revised requirements of § 1.6049–5(c)(1), these final regulations allow a payor to continue to use, for accounts opened on or after July 1, 2014, and before January 1, 2015, the rules regarding the use of documentary evidence under § 1.6049–5(c)(1) and (c)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2013 (prior § 1.6049–5(c)), instead of the new rules regarding documentary evidence for offshore obligations under § 1.6049–5T(c)(1) and (c)(4) of the 2014 temporary coordination regulations. For consistency, a payor that applies prior § 1.6049–5(c) to an account or obligation will also be required to apply § 1.1441–6(c)(2) (for documentary evidence used to support a treaty claim) and § 1.6049–5(e) as in effect and contained in 26 CFR part 1 revised April 1, 2013, with respect to the account or obligation. These modifications to the 2014 temporary coordination regulations were previewed in Notice 2014–59.

2. Presumption Rules for Bank Deposit Interest

These regulations also include a change to the presumption rule for U.S. source bank deposit interest in § 1.6049–5(d)(3)(iii)(A). This presumption rule was inadvertently removed in the 2014 temporary coordination regulations and the 2014 QI Agreement, and it was corrected in the Proposed QI Agreement. It is expected to apply only in cases in which chapter 4 withholding does not apply.

K. Minor and Non-Substantive Clarifications and Corrections

These final regulations also include various non-substantive clarifications and corrections to the 2014 temporary coordination regulations, including corrections of erroneous cross-references. For example, these final regulations clarify in § 1.1441–5(c)(2)(iii) that a withholding foreign partnership is required to assume primary withholding responsibility under chapters 3 and 4 to the extent required by the withholding foreign partnership agreement.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13653. Therefore, a regulatory assessment is not required.

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, the notice

of proposed rulemaking preceding the final regulations in this document were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these proposed regulations is Leni C. Perkins, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 31, and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.871–14 is amended by revising paragraphs (b), (c)(2) introductory text, (c)(2)(i) through (iv), (c)(3)(i), (c)(4), and (e)(1), removing paragraph (e)(4)(iv), and revising paragraph (j).

The revisions read as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(b) *Rules concerning obligations in bearer form before March 19, 2012*—(1) *In general.* Interest (including original issue discount) with respect to an obligation in bearer form is portfolio interest within the meaning of section 871(h)(2)(A) or 881(c)(2)(A) only if it is paid with respect to an obligation issued after July 18, 1984, and issued before March 19, 2012, that is described in section 163(f)(2)(B), as in effect before the amendment by section 502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Public Law 111–147, and the regulations under that section and an exception under section 871(h) or 881(c) does not apply. Any obligation that is not in registered form as defined in paragraph (c)(1)(i) of this section is an obligation in bearer form.

(2) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (b), see § 1.1441–1(b)(4)(i). See § 1.1471–2 for rules relating to withholding under chapter 4 of the Code that may apply to withholdable payments (as defined in § 1.1471–4(b)(145)) made on or after July 1, 2014, with respect to an agreement or instrument that is not treated as an obligation outstanding before March 19, 2012. For purposes of the preceding sentence, the terms *obligation* and *outstanding* are described in § 1.1471–2(b)). See also § 1.1471–4(d)(6) for the reporting requirements of participating foreign financial institutions (as defined in § 1.1471–1(b)(91)) with respect to accounts held by recalcitrant account holders (as defined in § 1.1471–5(g)). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8) for the payment of interest and § 1.6045–1(g)(1)(ii) for the redemption, retirement, or sale of an obligation in bearer form.

(c) * * *

(2) *Required statement.* For purposes of paragraph (c)(1)(ii)(C) of this section, a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5) if either it complies with one of the procedures described in this paragraph (c)(2) and does not have actual knowledge or reason to know that the beneficial owner is a U.S. person or it complies with the procedures described in paragraph (d) or (e) of this section (to the extent applicable).

(i) The U.S. person (or its authorized agent described in § 1.1441–7(c)(2)) can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii). See § 1.1441–1(b)(2)(vii) for rules regarding reliable association with documentation.

(ii) The U.S. person (or its authorized agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–5(c)(2)(iv) from a person claiming to be a withholding foreign partnership or § 1.1441–5(e)(v) for a person claiming to be a withholding foreign trust.

(iii) The U.S. person (or its authorized agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–1(e)(3)(ii) from a person representing to be a qualified intermediary that has assumed primary withholding responsibility for the payment in accordance with § 1.1441–1(e)(5)(iv) or a qualified intermediary that has provided a withholding statement that meets the requirements of § 1.1441–1(e)(5)(v)(C) or that includes the payment in a withholding rate pool for payments excepted from withholding.

(iv) The U.S. person (or its authorized agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–1(e)(3)(v) from a person claiming to be a U.S. branch of a foreign bank or of a foreign insurance company that is described in § 1.1441–1(b)(2)(iv)(A) or a U.S. branch designated in accordance with § 1.1441–1(b)(2)(iv)(E).

* * * * *

(3) *Time for providing certificate or documentary evidence*—(i) *General rule.* Interest on a registered obligation shall qualify as portfolio interest if the withholding certificate or documentary evidence that must be provided is furnished before expiration of the beneficial owner's period of limitation for claiming a refund of tax with respect to such interest. See, however, § 1.1441–1(b)(7) for consequences to a withholding agent that makes a payment without withholding even though it cannot reliably associate the payment with the documentation prior to the payment. If a withholding agent withholds an amount under chapter 3 of the Code because it cannot reliably associate the payment with the documentation for the beneficial owner on the date of payment, the beneficial owner may nevertheless claim the benefit of an exemption from tax under this section by claiming a refund or credit for the amount withheld based upon the procedures described in §§ 1.1464–1 and 301.6402–3(e) of this chapter. See §§ 1.1474–5 and 301.6402–3(e) of this chapter for the allowance and requirements for a refund with respect to an amount (including a payment of interest) that was withheld upon under chapter 4 of the Code. In the alternative, adjustments to any amount of overwithheld tax may be made under the procedures described in § 1.1461–2(a) for a payment withheld upon under

chapter 3 of the Code or in § 1.1474–2 for a payment withheld upon under chapter 4 of the Code.

* * * * *

(4) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (c)(4), see § 1.1441–1(b)(4)(i). For rules applicable to withholding certificates, see § 1.1441–1(e)(4). For rules regarding documentary evidence, see § 1.6049–5(c)(1). For application of presumptions when the U.S. person cannot reliably associate the payment with documentation, see § 1.1441–1(b)(3). For standards of knowledge applicable to withholding agents, see § 1.1441–7(b). For rules relating to reporting on Forms 1042 and 1042–S, see § 1.1461–1(b) and (c). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8) for the payment of interest and § 1.6045–1(g)(1)(i) for the redemption, retirement, or sale of an obligation in registered form. For rules relating to withholding under sections 1471 and 1472 that may apply notwithstanding the exemption for payments of portfolio interest under section 1441, see §§ 1.1471–2(a), 1.1471–4(b), and 1.1472–1(b).

* * * * *

(e) *Foreign-targeted registered obligations*—(1) *General rule.* The statement described in paragraph (c)(1)(ii) of this section is not required with respect to interest paid on an obligation issued before January 1, 2016, that is a registered obligation targeting foreign markets in accordance with the provisions of paragraph (e)(2) of this section if the interest is paid by a U.S. person, a withholding foreign partnership, or a U.S. branch described in § 1.1441–1(b)(2)(iv)(A) or (E) to a registered owner at an address outside the United States, provided that the registered owner is a financial institution described in section 871(h)(5)(B). In that case, the U.S. person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the beneficial owner is a United States person and if it receives the certificate described in paragraph (e)(3)(i) of this section from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in paragraph (e)(3)(ii) of this section from the beneficial owner, in accordance with the procedures described in paragraph (e)(4) of this section.

* * * * *

(j) *Effective/applicability date*—(1) *In general.* Except as otherwise provided in paragraph (j)(2) and (3) of this section, this section applies to payments of interest made on or after January 6, 2017. (For the rules that apply after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments of interest 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.)

(2) *Portfolio interest not to include interest received by 10-percent shareholders.* Paragraph (g) applies to interest paid after April 12, 2007. Taxpayers may choose to apply the rules of paragraph (g) to interest paid in any taxable year not closed by the period of limitations as of April 12, 2007, provided they do so consistently for all relevant partnerships during such years.

(3) *Portfolio interest not to include certain contingent interest.* The rules of paragraph (h) of this section apply beginning September 18, 2015.

§ 1.871–14T [Removed]

■ Par. 3. Section 1.871–14T is removed.

■ **Par. 4.** Section 1.1441–0 is amended by:

■ 1. Revising entries for § 1.1441–1(b)(2)(vii)(D) through (F) and (b)(3)(ii)(C).

■ 2. Adding entries for § 1.1441–1 (b)(3)(iii)(A)(*1*) and (*2*).

■ 3. Revising entry for § 1.1441–1(b)(3)(iii)(D).

■ 4. Adding entry for § 1.1441–1(b)(3)(iii)(E).

■ 5. Removing entries for § 1.1441–1(b)(3)(v)(C) and (D).

■ 6. Revising entries for § 1.1441–1(b)(3)(vi) through (b)(3)(vii)(B).

■ 7. Revising entries for § 1.1441–1(b)(6)(ii) through (b)(7)(v).

■ 8. Adding entries for § 1.1441–1(c)(2)(i) and (ii).

■ 9. Revising entries for § 1.1441–1(c)(5), (c)(10), and (c)(28) and (29).

■ 10. Adding entries for § 1.1441–1(c)(30) through (56).

■ 11. Adding entries for § 1.1441–1(e)(2)(ii)(A) and (B).

■ 12. Revising the entry for § 1.1441–1(e)(3)(iv).

■ 13. Adding entries for § 1.1441–1(e)(3)(iv)(C)(1) through (4) and § 1.1441–1(e)(3)(iv)(D)(*1*) through (*8*).

■ 14. Revising the entry for § 1.1441–1(e)(3)(v).

■ 15. Adding entries for § 1.1441–1(e)(4)(i)(A) and (B).

■ 16. Revising the entry for § 1.1441–1(e)(4)(ii)(A) and adding entries for § 1.1441–1(e)(4)(ii)(A)(*1*) and (*2*).

■ 17. Adding entries for § 1.1441–1(e)(4)(ii)(D)(*1*) through (*3*)

■ 18. Revising the entries for § 1.1441–1(e)(4)(iii).

■ 19. Adding entries from § 1.1441–1(e)(4)(iv)(B)(*1*) through (*4*).

■ 20. Revising the entry from § 1.1441–1(e)(4)(iv)(C) and adding entries for § 1.1441–1(e)(4)(iv)(D) and (E).

■ 21. Revising the entries for § 1.1441–1(e)(4)(v), § 1.1441–1(e)(4)(viii)(C), § 1.1441–1(e)(4)(ix) introductory text and § 1.1441–1(e)(4)(ix)(A) and (B).

■ 22. Adding entries for § 1.1441–1(e)(4)(ix)(B)(*1*) and (*2*)..

■ 23. Revising entry for § 1.1441–1(e)(4)(ix)(C) and adding entries for § 1.1441(e)(4)(ix)(C)(*1*) and (*2*) and § 1.1441–1(e)(4)(ix)(D).

■ 24. Revising entries for § 1.1441–1(e)(5)(i) and

■ 25. Adding entries for § 1.1441–1(e)(5)(v)(C)(1) through (f)(3).

■ 26. Adding entries for § 1.1441–2(b)(3)(iii), (b)(6), and (e)(7).

■ 27. Revising the entry for § 1.1441–3(a) and adding entries for § 1.1441–3(a)(1) and (2).

■ 28. Revising the entry for § 1.1441–3(c)(4)(i)(C).

■ 29. Adding entries for § 1.1441–3(g)(1) and (2).

■ 30. Revising entry for § 1.1441–3(h) and adding entries for § 1.1441–3(h)(1) and (2) and § 1.1441–3(i).

■ 31. Adding an entry for § 1.1441–4(a)(3)(iii); and revising entries for § 1.1441–4(b)(4) and (g).

■ 32. Removing entries for § 1.1441–4(g)(1) through (2).

■ 33. Adding an entry for § 1.1441–5(b)(2)(vi).

■ 34. Revising and adding entries for § 1.1441–5(c)(1)(iv) and (v).

■ 35. Revising entries for § 1.1441–5(c)(3)(iv) through (d)(2).

■ 36. Revising the entry for § 1.1441–5(e)(2).

■ 37. Adding an entry for § 1.1441–5(e)(3)(iii).

■ 38. Revising entries for § 1.1441–5(e)(5)(iv) and (g).

■ 39. Removing entries for § 1.1441–5(g)(1) and (2).

■ 40. Adding entries for § 1.1441–6(b)(1)(i) and (ii).

■ 41. Revising the entry for § 1.1441–6(c)(1).

■ 42. Revising the entry for § 1.1441–6(h).

■ 43. Adding an entry for § 1.1441–6(i).

■ 44. Revising the entry for § 1.1441–7(a)(2), and adding entries for § 1.1441–7(a)(3) and (4).

■ 45. Adding entries for § 1.1441–7(b)(3)(i) and (ii).

■ 46. Adding entries for § 1.1441–7(b)(5)(i) through (c)(3), § 1.1441–7(b)(6)(i) through (iii), § 1.1441–7(b)(8)(i) through (iv), and § 1.1441–7(b)(9)(i) and (ii).
■ 47. Revising entries for § 1.1441–7(b)(10) and (11) and adding entries for § 1.1441–7(b)(12) and (13).
■ 48. Revising the entry for § .1441–7(c).
■ 49. Adding entries for § 1.1441–7(f)(1) through (f)(2)(ii).
■ 50. Revising entry for § 1.1441–7(g).
■ 51. Adding an entry for § 1.1441–10.

The revisions and additions read as follows:

§ 1.1441–0 Outline for regulations provisions for section 1441.

This section lists captions contained in §§ 1.1441–1 through 1.1441–10.

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(2) * * *

(vii) * * *

(D) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and chapter 4 of the Internal Revenue Code.

(E) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility but not primary withholding under chapter 3 and chapter 4.

(F) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and chapter 4 and primary Form 1099 reporting and backup withholding responsibility and a withholding certificate provided by a withholding foreign partnership or a withholding foreign trust.

(3) * * *

(ii) * * *

(C) Documentary evidence furnished for offshore obligation.

(iii) Presumption of U.S. or foreign status.

(A) Payments to exempt recipients.

(*1*) In general.

(*2*) Special rule for withholdable payments made to exempt recipients.

* * * * *

(D) Payments with respect to offshore obligations.

(E) Certain payments for services.

* * * * *

(vi) U.S. branches and territory financial institutions not treated as U.S. persons.

(vii) Joint payees.

(A) In general.

(B) Special rule for offshore obligations.

* * * * *

(6) * * *

(ii) Examples.

(7) Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions.

(i) General rule.

(ii) Proof that tax liability has been satisfied.

(A) In general.

(B) Special rule for establishing that income is effectively connected with the conduct of a U.S. trade or business.

(iii) Liability for interest and penalties.

(iv) Special rule for determining validity of withholding certificate containing inconsequential errors.

(v) Special effective date.

* * * * *

(c) * * *

(2) * * *

(i) In general.

(ii) Dual residents.

* * * * *

(5) Financial institution and foreign financial institution (or FFI).

* * * * *

(10) Chapter 3 of the Code (or chapter 3).

* * * * *

(28) Nonwithholding foreign partnership (or NWP).

(29) Withholding foreign partnership (or WP).

(30) Possession of the United States or U.S. territory.

(31) Amount subject to chapter 3 withholding.

(32) EIN.

(33) Flow-through withholding certificate.

(34) Foreign payee.

(35) Intermediary withholding certificate.

(36) Nonwithholding foreign trust (or NWT).

(37) Payment with respect to an offshore obligation.

(38) Permanent residence address.

(i) In general.

(ii) Hold mail instruction.

(39) Standing instructions to pay amounts.

(40) Territory financial institution.

(41) TIN.

(42) Withholding foreign trust (or WT).

(43) Certified deemed-compliant FFI.

(44) Chapter 3 withholding rate pool.

(45) Chapter 3 status.

(46) Chapter 4 of the Code (or chapter 4).

(47) Chapter 4 status.

(48) Chapter 4 withholding rate pool.

(49) Deemed-compliant FFI.

(50) GIIN (or Global Intermediary Identification Number).

(51) NFFE.

(52) Nonparticipating FFI.

(53) Participating FFI.

(54) Preexisting obligation.

(55) Registered deemed-compliant FFI.

(56) Withholdable payment.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(A) In general.

(B) Requirement to collect foreign TIN and date of birth beginning January 1, 2017.

(3) * * *

(iv) Withholding statement provided by nonqualified intermediary.

* * * * *

(C) * * *

(*1*) In general.

(*2*) Nonqualified intermediary withholding statement for withholdable payments.

(*3*) Alternative withholding statement.

(*4*) Example.

(D) Alternative procedures.

(*1*) In general.

(*2*) Withholding rate pools.

(*i*) In general.

(*ii*) Withholding rate pools for .chapter 4 purposes.

(*3*) Allocation information.

(*4*) Failure to provide allocation information.

(*5*) Cure provision.

(*6*) Form 1042–S reporting in case of allocation failure.

(*7*) Liability for tax, interest, and penalties.

(*8*) Applicability to flow-through entities and certain U.S. branches.

(E) Notice procedures.

(v) Withholding certificate from certain U.S. branches (including territory financial institutions).

(vi) Reportable amounts.

(4) Applicable rules.

(i) Who may sign the certificate.

(A) In general.

(B) Electronic signatures.

(ii) Period of validity.

(A) General rule.

(*1*) Withholding certificates and documentary evidence.

(*2*) Documentary evidence for treaty claims and treaty statements.

* * * * *

(D) * * *

(*1*) Defined.

(*2*) Obligation to notify a withholding agent of a change in circumstances.

(*3*) Withholding agent's obligation with respect to a change in circumstances.

(iii) Retention of documentation.
(iv) Electronic transmission of information
(A) In general.
(B) Requirements.
(*1*) In general.
(*2*) Same information as paper Form W–8.
(*3*) Perjury statement and signature requirements.
(*i*) Perjury statement.
(*ii*) Electronic signature.
(*4*) Requests for electronic Form W–8 data.
(C) Form 8233.
(D) Forms and documentary evidence received by facsimile or email.
(E) Third party repositories.
(v) Additional procedures for certificates provided electronically.
* * * * *
(viii) * * *
(C) Reliance on a prior version of a withholding certificate.
(ix) Certificates to furnished for each obligation unless exception applies.
(A) Exception for certain branch or account systems or system maintained by agent.
(B) Reliance on certification provided by introducing brokers.
(*1*) In general.
(*2*) Example.
(C) Reliance on documentation and certifications provided between principals and agents.
(*1*) Withholding agent as agent.
(*2*) Withholding agent as principal.
(D) Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.
(5) Qualified intermediaries.
(i) In general.
* * * * *
(v) * * *
(A) In general.
(B) Content of withholding statement.
(C) Withholding rate pools
(*1*) In general.
(*2*) Withholding rate pool requirements for a withholdable payment.
(*3*) Alternative procedure for U.S. non-exempt recipients.
(D) Example.
(6) Qualified derivatives dealers.
(f) Effective/applicability date.
(1) In general.
(2) Lack of documentation for past years.
(3) Section 871(m) transactions.

§ 1.1441–2 Amounts subject to withholding.

* * * * *
(b) * * *
(3) * * *
(iii) Exceptions to withholding.
* * * * *
(6) Dividend equivalents.
* * * * *
(e) * * *
(7) Payments of dividend equivalents.
(i) In general.
(ii) Payment.
(iii) Premiums and other upfront payments.
* * * * *

§ 1.1441–3 Determination of amounts to be withheld.

(a) General rule.
(1) Withholding on gross amount.
(2) Coordination with chapter 4.
* * * * *
(c) * * *
(4) * * *
(i) * * *
(C) Coordination with REIT/QIE withholding.
* * * * *
(g) * * *
(1) Duty to withhold.
(2) Effective date.
(h) Dividend equivalents.
(1) Withholding on gross amount.
(2) Reliance by withholding agent on reasonable determinations.
(3) Effective/applicability date.
(i) Effective/applicability date.

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) * * *
(3) * * *
(iii) Exception for specified notional principal contracts.
(b) * * *
(4) Final payment exemption.
* * * * *
(g) Effective/applicability date.

§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.

* * * * *
(b) * * *
(2) * * *
(vi) Coordination with chapter 4 requirements for U.S. partnerships, trusts, and estates.
(c) * * *
(1) * * *
(iv) Coordination with chapter 4 for payments made to foreign partnerships.
(v) Examples.
* * * * *
(3) * * *
(iv) Withholding statement provided by nonwithholding foreign partnership and coordination with chapter 4.
(v) Withholding and reporting by a foreign partnership.
(d) Presumption rules.
(1) In general.
(2) Determination of partnership status as U.S. or foreign in the absence of documentation.
* * * * *
(e) * * *
(2) Payments to foreign complex trusts and foreign estates.
(3) * * *
(iii) Coordination with chapter 4 for payments made to foreign simple trusts and foreign grantor trusts.
* * * * *
(5) * * *
(iv) Withholding statement provided by foreign simple trust or foreign grantor trust and coordination with chapter 4.
* * * * *
(g) Effective/applicability date.

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

* * * * *
(b) * * *
(1) * * *
(i) Identification of limitation on benefits provisions.
(ii) Reason to know based on existence of treaty.
* * * * *
(c) * * *
(1) General rule.
* * * * *
(h) Dividend equivalents.
(i) Effective/applicability dates.
(1) General rule.
(2) Dividend equivalents.

§ 1.1441–7 General provisions relating to withholding agents.

(a) * * *
(2) Withholding agent with respect to dividend equivalents.
(3) Examples.
(4) Effective/applicability date.
(b) * * *
(3) * * *
(i) In general.
(ii) Limits on reason to know for preexisting obligations.
* * * * *
(5) * * *
(i) Classification of U.S. status, U.S. address, or U.S. telephone number.
(ii) U.S. place of birth.
(iii) Standing instructions with respect to offshore obligations.
(6) Withholding certificate—claim of reduced rate of withholding under.
(i) Permanent residence address.
(ii) Mailing address.
(iii) Standing instructions.
(7) Documentary evidence.
(8) Documentary evidence—establishment of foreign status.
(i) Documentary evidence received prior to January 1, 2001.
(ii) Documentary evidence received after December 31, 2000.
(A) Treatment of individual's foreign status.
(B) Presumption of entity's foreign status.

(iii) U.S. place of birth.
(iv) Standing instructions with respect of offshore obligations.
(9) Documentary evidence—claim of reduced rate of withholding under treaty.
(i) Permanent residence address and mailing address.
(ii) Standing instructions.
(10) Indirect account holders.
(11) Limits on reason to know for multiple obligations belonging to a single person.
(12) Reasonable explanation supporting claim of foreign status.
(13) Additional guidance.
(c) Agent.
(1) In general.
(2) Authorized agent.
(3) Liability of withholding agent acting through an agent.
* * * * *
(f) * * *
(1) Liability of withholding agent.
(2) Exception for withholding agents that do not know of conduit financing arrangement.
(i) In general.
(ii) Examples.
(g) Effective/applicability date.
* * * * *

§ 1.1441–10 Withholding agents with respect to fast-pay arrangements.

(a) In general.
(b) Exception.
(c) Liability.
(d) Examples.
(e) Effective date.

■ **Par. 5.** Section 1.1441–1 is amended by:

■ 1. Revising paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(iii)(A), (b)(2)(iv)(A), (b)(2)(iv)(B)(*2*) though (*4*), (b)(2)(iv)(C), (b)(2)(iv)(E), (b)(2)(vi), (b)(2)(vii)(B) through (b)(2)(vii)(F), (b)(3)(i), (b)(3)(ii), (b)(3)(iii) introductory text, (b)(3)(iii)(A)(*1*), and (b)(3)(iii)(A)(*1*)(*i*) through (b)(3)(iii)(A)(*1*)(*v*), (b)(3)(iii)(*A*)(*2*), (b)(3)(iii)(D), (b)(3)(iv) introductory text, (b)(3)(iv)(A), (b)(3)(v)(B), (b)(3)(vi), (b)(3)(vii), (b)(3)(ix)(A), (b)(3)(x), (b)(4) introductory text, (b)(4)(i), (b)(5)(ix), (b)(6), (b)(7)(i) introductory text, and (b)(7)(i)(A) through (b)(7)(i)(C).
■ 2. Redesignating paragraph (b)(7)(ii) as (b)(7)(ii)(A) and revising it.
■ 3. Adding reserved paragraph (b)(7)(ii)(C).
■ 4. Revising paragraphs (b)(7)(iv) and (v) and (c) introductory text.
■ 5. Redesignating paragraph (c)(2) as (c)(2)(i) and revising it.
■ 6. Adding reserved paragraph (c)(2)(ii).
■ 7. Revising paragraphs (c)(3)(ii), (c)(5), (c)(10), (c)(12), (c)(16) and (17), (c)(23), (c)(25), and (c)(28) through (37).
■ 8. Redesignating paragraph (c)(38) as (c)(38)(i) and revising it.
■ 9. Adding reserved paragraph (c)(38)(ii).
■ 10. Revising paragraphs (c)(39) through (56), (d)(4), and (e)(1)(ii)(A)(*2*) and (*3*).
■ 11. Redesignating paragraph (e)(2)(ii) as (e)(2)(ii)(A) and revising new paragraph (e)(2)(ii)(A).
■ 12. Adding reserved paragraph (e)(2)(ii)(B).
■ 13. Revising paragraphs (e)(3)(ii) introductory text, (e)(3)(ii)(A), (e)(3)(ii)(C), (e)(3)(ii)(D), (e)(3)(ii)(F), (e)(3)(iii) introductory text, (e)(3)(iii)(A), (e)(3)(iii)(C) through (E), and (e)(3)(iv)(A) through (e)(3)(iv)(C)(*2*)(*v*).
■ 14. Adding paragraph (e)(3)(iv)(C)(*2*)(*v*).
■ 15. Redesignating paragraph (e)(3)(iv)(C)(*3*) as (e)(3)(iv)(C)(*4*) and revising it.
■ 16. Adding reserved new paragraph (e)(3)(iv)(C)(*3*)
■ 17. Revising paragraphs (e)(3)(iv)(D)(*1*) through (*6*), (e)(3)(iv)(E), (e)(3)(v), and (e)(4) introductory text.
■ 18. Redesignating paragraph (e)(4)(i) as (e)(4)(i)(A) and revising it.
■ 19. Adding reserved paragraph (e)(4)(i)(B).
■ 20. Revising paragraph (e)(4)(ii)(A).
■ 22. Revising paragraphs (e)(4)(ii)(B) introductory text, (e)(4)(ii)(B)(*1*) through (*6*), and (e)(4)(ii)(B)(*8*) through (*10*).
■ 23. Removing paragraph (e)(4)(ii)(B)(*11*) and redesignating paragraph (e)(4)(ii)(B)(*12*) as paragraph (e)(4)(ii)(B)(*11*).
■ 24. Revising paragraphs (e)(4)(ii)(C) and (D), (e)(4)(iii), and (e)(4)(iv)(A).
■ 25. Redesignating paragraph (e)(4)(iv)(C) as (e)(4)(iv)(D) and revising it.
■ 26. Adding reserved paragraph (e)(4)(iv)(C).
■ 27. Adding reserved paragraph (e)(4)(iv)(E).
■ 28. Revising paragraphs (e)(4)(v), (e)(4)(vi), (e)(4)(vii) introductory text, (e)(4)(vii)(A), (e)(4)(vii)(F), (e)(4)(vii)(H), (e)(4)(vii)(l), (e)(4)(viii) introductory text, (e)(4)(viii)(B) and (C), (e)(4)(ix), (e)(5)(ii) introductory text, and (e)(5)(ii)(A) through (D).
■ 29. Revising paragraphs (e)(5)(iii) and (iv), (e)(5)(v)(A), (e)(5)(v)(B) introductory text, and (e)(5)(v)(B)(*1*) through (*3*).
■ 30. Redesignating paragraph (e)(5)(v)(B)(*4*) as (e)(5)(v)(B)(*5*) and revising it.
■ 31. Revising paragraphs (e)(5)(v)(C) and (D) and (f)(1)(4).

The additions and revisions read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) *Purpose and scope.* This section, §§ 1.1441–2 through 1.1441–9, and 1.1443–1 provide rules for withholding under sections 1441, 1442, and 1443 when a payment is made to a foreign person. This section provides definitions of terms used in chapter 3 of the Internal Revenue Code (Code) and regulations thereunder. It prescribes procedures to determine whether an amount must be withheld under chapter 3 of the Code and documentation that a withholding agent may rely upon to determine the status of a payee or a beneficial owner as a U.S. person or as a foreign person and other relevant characteristics of the payee that may affect a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder. Special procedures regarding payments to foreign persons that act as intermediaries are also provided. Section 1.1441–2 defines the income subject to withholding under sections 1441, 1442, and 1443 and the regulations under these sections. Section 1.1441–3 provides rules regarding the amount subject to withholding and rules for coordinating withholding under this section with withholding under section 1445 and under chapter 4 of the Code. Section 1.1441–4 provides exemptions from withholding for, among other things, certain income effectively connected with the conduct of a trade or business in the United States, including certain compensation for the personal services of an individual. Section 1.1441–5 provides rules for withholding on payments made to flow-through entities and other similar arrangements. Section 1.1441–6 provides rules for claiming a reduced rate of withholding under an income tax treaty. Section 1.1441–7 defines the term withholding agent and provides due diligence rules governing a withholding agent's obligation to withhold. Section 1.1441–8 provides rules for relying on claims of exemption from withholding for payments to a foreign government, an international organization, a foreign central bank of issue, or the Bank for International Settlements. Sections 1.1441–9 and 1.1443–1 provide rules for relying on claims of exemption from withholding for payments to foreign tax exempt organizations and foreign private foundations.

(b) *General rules of withholding*—(1) *Requirement to withhold on payments to foreign persons.* A withholding agent must withhold 30 percent of any payment of an amount subject to

withholding made to a payee that is a foreign person unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. However, a withholding agent making a payment to a foreign person need not withhold where the foreign person assumes responsibility for withholding on the payment under chapter 3 of the Code and the regulations thereunder as a qualified intermediary (see paragraphs (e)(5) and (e)(6) of this section), as a U.S. branch of a foreign person (see paragraph (b)(2)(iv) of this section), as a withholding foreign partnership (see § 1.1441–5(c)(2)(i)), or as a withholding foreign trust (see § 1.1441–5(e)(5)(v)). When withholding under chapter 4 was applied to a payment, the withholding obligation under this section is satisfied. See § 1.1441–3(a)(2). This section (dealing with general rules of withholding and claims of foreign or U.S. status by a payee or a beneficial owner) and §§ 1.1441–4, 1.1441–5, 1.1441–6, 1.1441–8, 1.1441–9, and 1.1443–1 provide rules for determining whether documentation is required as a condition for reducing the rate of withholding on a payment to a foreign beneficial owner or to a U.S. payee and if so, the nature of the documentation upon which a withholding agent may rely in order to reduce such rate. Paragraph (b)(2) of this section prescribes the rules for the determination of who the payee is, the extent to which a payment is treated as made to a foreign payee, and reliable association of a payment with documentation. Paragraph (b)(3) of this section describes the applicable presumptions for determining the payee's status as U.S. or foreign and the payee's other characteristics (*e.g.,* as an owner or intermediary, as an individual, partnership, corporation, etc.). Paragraph (b)(4) of this section lists the types of payments for which the 30-percent withholding rate may be reduced. Because the treatment of a payee as a U.S. or a foreign person also has consequences for purposes of making an information return under the provisions of chapter 61 of the Code and for withholding under other provisions of the Code, such as sections 3402, 3405, or 3406, paragraph (b)(5) of this section lists applicable provisions outside chapter 3 of the Code that require certain payees to establish their foreign status (*e.g.,* in order to be exempt from information reporting). Paragraph (b)(6) of this section describes the withholding obligations of a foreign person making a payment that it has received in its capacity as an intermediary. Paragraph (b)(7) of this section describes the liability of a withholding agent that fails to withhold at the required 30-percent rate in the absence of documentation. Paragraph (b)(8) of this section deals with adjustments and refunds in the case of overwithholding. Paragraph (b)(9) of this section deals with determining the status of the payee when the payment is jointly owned. See paragraph (c)(6) of this section for a definition of beneficial owner. See § 1.1441–7(a) for a definition of withholding agent. See § 1.1441–2(a) for the determination of an amount subject to withholding. See § 1.1441–2(e) for the definition of a payment and when it is considered made. Except as otherwise provided, the provisions of this section apply only for purposes of determining a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder.

(2) *Determination of payee and payee's status*—(i) *In general.* Except as otherwise provided in this paragraph (b)(2) and § 1.1441–5(c)(1) and (e)(3), a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount (as defined in paragraph (c)(6) of this section). A foreign payee is a payee who is a foreign person. A U.S. payee is a payee who is a U.S. person. Generally, the determination by a withholding agent of the U.S. or foreign status of a payee and of its other relevant characteristics (*e.g.,* as a beneficial owner or intermediary, or as an individual, corporation, or flow-through entity) is made on the basis of a withholding certificate that is a Form W–8 or a Form 8233 (indicating foreign status of the payee or beneficial owner) or a Form W–9 (indicating U.S. status of the payee). The provisions of this paragraph (b)(2), paragraph (b)(3) of this section, and § 1.1441–5(c), (d), and (e) dealing with determinations of payee and applicable presumptions in the absence of documentation apply only to payments of amounts subject to withholding under chapter 3 of the Code (within the meaning of § 1.1441–2(a)). However, for a payment that is both an amount subject to withholding under chapter 3 and a withholdable payment under chapter 4, first apply the rules of § 1.1471–3 for determining the payee of a withholdable payment under chapter 4 and the applicable presumptions in the absence of documentation applicable to such payments. See also § 1.6049–5(d) for payments of amounts that are not subject to withholding under chapter 3 of the Code (or the regulations thereunder) but that may be reportable under provisions of chapter 61 of the Code (and the regulations thereunder). See paragraph (d) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a U.S. person. See paragraph (e) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a foreign person. For applicable presumptions of status in the absence of documentation, see paragraph (b)(3) of this section and § 1.1441–5(d). For definitions of a foreign person and U.S. person, see paragraph (c)(2) of this section.

* * * * *

(iii) *Payments to wholly-owned entities*—(A) *Foreign-owned domestic entity.* A payment to a wholly-owned domestic entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall be treated as a payment to the owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section. For purposes of this paragraph (b)(2)(iii)(A), a domestic entity means a person that would be treated as a U.S. person if it had an election in effect under § 301.7701–3(c)(1)(i) of this chapter to be treated as a corporation. For example, a limited liability company, A, organized under the laws of the State of Delaware, opens an account at a U.S. bank. Upon opening of the account, the bank requests A to furnish a Form W–9 as required under section 6049(a) and the regulations under that section. A does not have an election in effect under § 301.7701–3(c)(1)(i) of this chapter and, therefore, is not treated as an organization taxable as a corporation, including for purposes of the exempt recipient provisions in § 1.6049–4(c)(1). If A has a single owner and the owner is a foreign person (as defined in paragraph (c)(2) of this section), then A may not furnish a Form W–9 because it may not represent that it is a U.S. person for purposes of the provisions of chapters 3, 4, and 61 of the Code, and section 3406. Therefore, A must furnish a Form W–8 with the name, address, and taxpayer identifying number (TIN) (if required) of the foreign person who is the single owner in the same manner as if the account were opened directly by the foreign single owner. See §§ 1.894–1(d) and 1.1441–6(b)(2) for

special rules where the entity's owner is claiming a reduced rate of withholding under an income tax treaty.

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(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to a U.S. branch of a foreign person is a payment to a foreign person. However, a U.S. branch of a foreign person that is described in this paragraph (b)(2)(iv)(A) may agree to be treated as a U.S. person for purposes of withholding on specified payments to the U.S. branch. If a U.S. branch agrees to be treated as a U.S. person with a withholding agent, it is required to act as a U.S. person with respect to all other withholding agents, including when acting as an intermediary with respect to withholdable payments for purposes of chapter 4. See § 1.1471–3(a)(3)(vi). In such cases, the U.S. branch is treated as a payee that is a U.S. person. See paragraph (C) of this section for additional requirements for the U.S. branch when treated as a payor that is a U.S. person. Notwithstanding the preceding sentence, a withholding agent making a payment to a U.S. branch treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not treat the branch as a U.S. person for purposes of reporting the payment made to the branch. Therefore, a payment to such U.S. branch shall be reported on Form 1042–S under § 1.1461–1(c) and § 1.1474–1(d)(1)(i) for a payment of U.S. source FDAP income that is a chapter 4 reportable amount as defined in § 1.1471–1(b)(18). Further, a U.S. branch that is treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not be treated as a U.S. person for purposes of the withholding certificate it provides to a withholding agent. Therefore, the U.S. branch must furnish a U.S. branch withholding certificate on a Form W–8IMY as provided in paragraph (e)(3)(v) of this section and not a Form W–9. An agreement to treat a U.S. branch as a U.S. person must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) and eligible to be treated as a U.S. person is any U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. In addition, a territory financial institution (including a territory financial institution that is a flow-through entity) will be treated as a U.S. branch for purposes of this paragraph (b)(2)(iv)(A) and therefore is eligible to be treated as a U.S. person. The Internal Revenue Service (IRS) may approve a list of U.S. branches that may be eligible for treatment as U.S. persons under this paragraph (b)(2)(iv)(A) (see § 601.601(d)(2) of this chapter). See § 1.6049–5(c)(5)(vi) for the treatment of U.S. branches as U.S. payors if they make a payment that is subject to reporting under chapter 61 of the Code. Also see § 1.6049–5(d)(1)(ii) for the treatment of U.S. branches as foreign payees under chapter 61 of the Code.

(B) * * *

(*2*) As a payment directly to the persons whose names are on withholding certificates or other appropriate documentation forwarded by the U.S. branch to the withholding agent when no agreement is in effect to treat the U.S. branch as a U.S. person for such payment, to the extent the withholding agent can reliably associate the payment with such certificates or documentation;

(*3*) As a payment to a foreign person of income that is effectively connected with the conduct of a trade or business in the United States if the withholding agent has obtained an EIN for the branch and cannot reliably associate the payment with a withholding certificate from a U.S. branch (or any other certificate or other appropriate documentation from another person). See § 1.1441–4(a)(2)(ii); or

(*4*) As a payment to a foreign person of income that is not effectively connected with the conduct of a trade or business in the United States if the withholding agent has not obtained an EIN for the branch and cannot reliably associate the payment with a withholding certificate from the U.S. branch.

(C) *Consequences to the U.S. branch.* A U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section shall be treated as a separate person for purposes of section 1441(a) and all other provisions of chapters 3 and 4 of the Code and the regulations thereunder (other than for purposes of reporting the payment to the U.S. branch under § 1.1461–1(c) and § 1.1474–1(d)(1)(i) for a chapter 4 reportable amount by a withholding agent) or for purposes of the documentation such a branch must furnish under paragraph (e)(3)(v) of this section) for any payment that it receives as such. Thus, the U.S. branch shall be responsible for withholding on a payment as a U.S. person in accordance with the provisions under chapters 3 and 4 of the Code and the regulations thereunder and other applicable withholding provisions of the Code. For this purpose, it shall obtain and retain documentation from payees or beneficial owners of the payments that it receives as an intermediary as a U.S. person in the same manner as if it were a separate entity. For example, if a U.S. branch receives a payment as an intermediary on behalf of customers of its home office and the home office is a qualified intermediary, the U.S. branch must obtain a qualified intermediary withholding certificate described in paragraph (e)(3)(ii) of this section from its home office. Similarly, if a U.S. branch of an FFI treated as a U.S. person receives a payment on behalf of another branch of the FFI that is treated as a nonparticipating FFI, the U.S. branch must withhold on the payment made to the other branch as if it were a separate person to the extent required under chapter 4. In addition, a U.S. branch that has not provided documentation to the withholding agent for a payment that is, in fact, not effectively connected income is a withholding agent with respect to that payment. See paragraph (b)(6) of this section and § 1.1441–4(a)(2)(ii).

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(E) *Payments to other U.S. branches.* Similar withholding procedures may apply to payments to U.S. branches that are not described in paragraph (b)(2)(iv)(A) of this section to the extent permitted by the IRS. Any such branch must establish that its situation is analogous to that of a U.S. branch described in paragraph (b)(2)(iv)(A) of this section. In the alternative, the branch must establish that the withholding and reporting requirements under chapter 3 of the Code and the regulations thereunder impose an undue administrative burden and that the collection of the tax imposed by section 871(a) or 881(a) on the foreign person (or its members in the case of a foreign partnership) will not be jeopardized by the exemption from withholding. Generally, an undue administrative burden will be found to exist in a case where the person entitled to the income, such as a foreign insurance company, receives from the withholding agent income on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with conduct of a trade or business within the United States and the criteria for determining the effective connection are unduly difficult to apply because of the circumstances under which such

securities are held. No exemption from withholding shall be granted under this paragraph (b)(2)(iv)(E) unless the person entitled to the income complies with such other requirements as may be imposed by the IRS and unless the IRS is satisfied that the collection of the tax on the income involved will not be jeopardized by the exemption from withholding. The IRS may prescribe such procedures as are necessary to make these determinations (see § 601.601(d)(2) of this chapter).

* * * * *

(vi) *Other payees.* A payment to a person described in § 1.6049–4(c)(1)(ii) that the withholding agent would treat as a payment to a foreign person without obtaining documentation for purposes of information reporting under section 6049 (if the payment were interest) is treated as a payment to a foreign payee for purposes of chapter 3 of the Code and the regulations thereunder (or to a foreign beneficial owner to the extent provided in paragraph (e)(1)(ii)(A)(*6*) or (*7*) of this section). Further, a payment that the withholding agent can reliably associate with documentary evidence described in § 1.6049–5(c)(1) relating to the payee is treated as a payment to a foreign payee. See § 1.1441–5(b)(1) and (c)(1) for payee determinations for payments to partnerships. See § 1.1441–5(e) for payee determinations for payments to foreign trusts or foreign estates.

(vii) * * *

(B) *Special rules applicable to a withholding certificate from a nonqualified intermediary or flow-through entity.* (*1*) In the case of a payment made to a nonqualified intermediary, a flow-through entity (as defined in paragraph (c)(23) of this section), or a U.S. branch described in paragraph (b)(2)(iv) of this section (other than a U.S. branch that is treated as a U.S. person), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent can allocate the payment to a valid nonqualified intermediary, flow-through entity, or U.S. branch withholding certificate (and a withholding certificate provided by a nonparticipating FFI with respect to a portion of a payment that is a withholdable payment allocated to an exempt beneficial owner as described in § 1.1471–3(c)(3)(iii)(B)(*4*)); the withholding agent can reliably determine how much of the payment relates to valid documentation provided by a payee as determined under paragraph (c)(12) of this section (*i.e.,* a person that is not itself an intermediary, flow-through entity, or U.S. branch); and the withholding agent has sufficient information to report the payment on Form 1042–S or Form 1099, if reporting is required. See, however, paragraph (e)(3)(iv) of this section for when a nonqualified intermediary may report payees to the withholding agent in a chapter 4 withholding rate pool, in which case a withholding agent need not associate the portion of the payment attributable to such payees with documentation from each such payee. See also paragraph (e)(3)(iii) of this section for the requirements of a nonqualified intermediary withholding certificate, paragraph (e)(3)(v) of this section for the requirements of a U.S. branch withholding certificate, and §§ 1.1441–5(c)(3)(iii) and (e)(5)(iii) for the requirements of a flow-through withholding certificate (including the requirements for a withholding certificate associated with a withholdable payment). Thus, a payment cannot be reliably associated with valid documentation provided by a payee to the extent such documentation is lacking or unreliable, or to the extent that information required to allocate and report all or a portion of the payment to each payee is lacking or unreliable. If a withholding certificate attached to an intermediary, U.S. branch, or flow-through withholding certificate is another intermediary, U.S. branch, or flow-through withholding certificate, the rules of this paragraph (b)(2)(vii)(B) apply by treating the share of the payment allocable to the other intermediary, U.S. branch, or flow-through entity as if the payment were made directly to such other entity. See paragraph (e)(3)(iv)(D) of this section for rules permitting information allocating a payment to documentation to be received after the payment is made.

(*2*) The rules of paragraph (b)(2)(vii)(B)(*1*) of this section are illustrated by the following examples. Each example illustrates a payment that is not a withholdable payment and, as a result of which, neither the chapter 4 status of the NQI nor payee specific documentation with respect to the chapter 4 status is required to be provided to the withholding agent (and no withholding applies under chapter 4 on each payment). See paragraph (e)(3)(iv)(C) of this section for the requirements of a withholding statement provided by a nonqualified intermediary that receives a withholdable payment and for an example illustrating the requirements of an NQI providing a withholding statement to a withholding agent for a withholdable payment.

Example 1. WA, a withholding agent, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471–2(b) (and thus the payment is not a withholdable payment) to NQI, an intermediary that is a nonqualified intermediary. NQI provides a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section. NQI does not, however, provide valid documentation from the persons on whose behalf it receives the interest payment, and, therefore, the interest payment cannot be reliably associated with valid documentation provided by a payee. WA must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment.

Example 2. The facts are the same as in *Example 1,* except that NQI does attach valid beneficial owner withholding certificates (as defined in paragraph (e)(2)(i) of this section) from A, B, C, and D establishing their statuses as foreign persons. NQI does not, however, provide WA with any information allocating the payment among A, B, C, and D and, therefore, WA cannot determine the portion of the payment that relates to each beneficial owner withholding certificate. The interest payment cannot be reliably associated with valid documentation from a payee, and WA must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment. See, however, paragraph (e)(3)(iv)(D) of this section providing for alternative procedures that allow a nonqualified intermediary to provide allocation information after a payment is made.

Example 3. The facts are the same as in *Example 2,* except that NQI provides allocation information associated with its intermediary withholding certificate indicating that 25% of the interest payment is allocable to A and 25% to B. NQI does not provide any allocation information regarding the remaining 50% of the payment. WA may treat 25% of the payment as made to A and 25% as made to B. The remaining 50% of the payment cannot be reliably associated with valid documentation from a payee, however, since NQI did not provide information allocating the payment. Thus, the remaining 50% of the payment is subject to the presumption rules of paragraph (b)(3)(v) of this section.

Example 4. WA makes a payment of U.S. source interest to NQI1, an intermediary that is not a qualified intermediary. NQI1 provides WA with a valid nonqualified intermediary withholding certificate as well valid beneficial owner withholding certificates from A and B and a valid nonqualified intermediary withholding certificate from NQI2. NQI2 has provided valid beneficial owner documentation from C sufficient to establish C's status as a foreign person. Based on information provided by NQI1, WA can allocate 20% of the interest payment to A, and 20% to B. Based on information that NQI2 provided NQI1 and that NQI1 provides to WA, WA can allocate 60% of the payment to NQI2, but can only allocate one half of that payment (30%) to C. Therefore, WA cannot reliably associate the remainder of the payment made to NQI2 (30% of the total payment) with valid

documentation and must apply the presumption rules of paragraph (b)(3)(v) of this section to that portion of the payment.

(C) *Special rules applicable to a withholding certificate provided by a qualified intermediary that does not assume primary withholding responsibility*—(*1*) If a payment is made to a qualified intermediary that does not assume primary withholding responsibility under chapters 3 and 4 of the Code or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Code for the payment, a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate described in paragraph (e)(3)(ii) of this section and the withholding agent can reliably determine the portion of the payment that relates to a chapter 3 withholding rate pool, as defined in paragraph (c)(44) of this section; a chapter 4 withholding rate pool (including for a withholdable payment as described in paragraph (e)(5)(v)(C)(*2*) of this section), as defined in paragraph (c)(48) of this section; or a pool attributable to U.S. exempt recipients. In the case of a withholding rate pool attributable to a U.S. non-exempt recipient, a payment cannot be reliably associated with valid documentation unless, prior to the payment, the qualified intermediary has provided the U.S. person's Form W–9 (or, in the absence of the form, the name, address, and TIN, if available, of the U.S. person) and sufficient information for the withholding agent to report the payment on Form 1099. See, however, paragraph (e)(5)(v)(C)(*3*) of this section for alternative procedures for allocating payments among U.S. non-exempt recipients and paragraphs (e)(5)(v)(C)(*1*) and (*2*) of this section for when a chapter 4 withholding rate pool of U.S. payees may be provided by a qualified intermediary instead of documentation with respect to each U.S. non-exempt recipient.

(*2*) The rules of this paragraph (b)(2)(vii)(C) are illustrated by the following examples:

Example 1. WA, a withholding agent, makes a payment of U.S. source dividends that is a withholdable payment to QI. QI provides WA with a valid qualified intermediary withholding certificate on which it indicates that it does not assume primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406. QI does not provide any information allocating the dividend to withholding rate pools. WA cannot reliably associate the payment with valid payee documentation and therefore must apply the presumption rules applicable to a withholdable payment under § 1.1471–3(f)(5) to determine the status of the payee for purposes of chapter 4. See *Example 2* for an application of the presumption rules under § 1.1471–3(f).

Example 2. WA makes a payment of U.S. source dividends that is a withholdable payment to QI, which is an NFFE. QI has 5 customers: A, B, C, D, and E, all of whom are individuals except for C. QI has obtained valid documentation from A and B establishing their entitlement to a 15% rate of tax on U.S. source dividends under an income tax treaty. C is a U.S. person that is an exempt recipient as defined in paragraph (c)(20) of this section. D and E are U.S. non-exempt recipients who have provided Forms W–9 to QI. A, B, C, D, and E are each entitled to 20% of the dividend payment. QI provides WA with a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section with which it associates the Forms W–9 from D and E. QI associates the following allocation information with its qualified intermediary withholding certificate: 40% of the payment is allocable to the 15% chapter 3 withholding rate pool, and 20% is allocable to each of D and E. QI does not provide any allocation information regarding the remaining 20% of the payment. WA cannot reliably associate 20% of the payment with valid documentation and, therefore, must apply the presumption rules applicable to a withholdable payment. Because QI is receiving a withholdable payment as an intermediary, under paragraph (b)(3)(iii) of this section WA must apply the presumption rule of § 1.1471–3(f)(5) to treat the portion of the payment that cannot reliably be associated with valid documentation as made to a nonparticipating FFI account holder of QI. As a result, WA is required to withhold at a 30% rate of tax under chapter 4. See § 1.1441–3(a)(2) permitting WA to credit the amount withheld under chapter 4 against the liability for tax due on the payment under section 1441 or 1442. The 40% of the payment allocable to the 15% withholding rate pool and the portion of the payments allocable to D and E are payments that can be reliably associated with documentation.

(D) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and chapter 4 of the Internal Revenue Code.* (*1*) In the case of a payment made to a qualified intermediary that assumes primary withholding responsibility under chapters 3 and 4 of the Code with respect to that payment (but does not assume primary Form 1099 reporting and backup withholding responsibility under chapter 61 of the Code and section 3406), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to the withholding rate pool for which the qualified intermediary assumes primary withholding responsibility and the portion of the payment attributable to withholding rate pools for each U.S. non-exempt recipient for whom the qualified intermediary has provided a Form W–9 (or, in absence of the form, the name, address, and TIN, if available, of the U.S. non-exempt recipient). See paragraph (e)(5)(iv) of this section (requiring a qualified intermediary assuming primary withholding responsibility under chapter 3 to assume primary withholding responsibility under chapter 4). See also paragraph (e)(5)(v)(C)(*3*) of this section for alternative allocation procedures for payments made to U.S. persons that are not exempt recipients and paragraphs (e)(5)(v)(C)(*1*) and (*2*) of this section for when a qualified intermediary may provide a chapter 4 withholding rate pool of U.S. payees to a withholding agent instead of documentation with respect to each U.S. non-exempt recipient.

(*2*) *Examples.* The following examples illustrate the rules of paragraph (b)(2)(vii)(D)(*1*) of this section. See also the example in paragraph (e)(5)(v)(D) for rules for reporting of U.S. non-exempt recipients when a qualified intermediary that is an FFI reports a U.S. account under chapter 4.

Example 1. WA makes a payment of U.S. source interest that is a withholdable payment to QI, a qualified intermediary that is an NFFE. QI provides WA with a withholding certificate that indicates that QI will assume primary withholding responsibility under chapters 3 and 4 of the Code with respect to the payment. In addition, QI attaches a Form W–9 from A, a U.S. non-exempt recipient, as defined in paragraph (c)(21) of this section, and provides the name, address, and TIN of B, a U.S. person that is also a non-exempt recipient but who has not provided a Form W–9. QI associates a withholding statement with its qualified intermediary withholding certificate indicating that 10% of the payment is attributable to A and 10% to B, and that QI will assume primary withholding responsibility under chapters 3 and 4 with respect to the remaining 80% of the payment. WA can reliably associate the entire payment with valid documentation. Although under the presumption rule of paragraph (b)(3)(v) of this section, an undocumented person receiving U.S. source interest is generally presumed to be a foreign person, WA has actual knowledge that B is a U.S. non-exempt recipient and therefore must report the payment on Form 1099 and backup withhold on the interest payment under section 3406.

Example 2. The facts are the same as in *Example 1,* except that no information has been provided for the 20% of the payment that is allocable to A and B. Thus, QI has accepted withholding responsibility for 80% of the payment but has provided no information for the remaining 20%. In this case, 20% of the payment cannot be reliably associated with valid documentation, and, under paragraph (b)(3)(iii) of this section, WA must apply the presumption rule of § 1.1471–3(f)(5) to treat the payment as made to a nonparticipating FFI and withhold 30% of the gross amount of the payment (because the payment is a withholdable payment and is treated as made to a foreign payee under paragraph (b)(3)(v) of this section). See *Example 2* in paragraph (b)(2)(vii)(C)(*2*) and § 1.1471–3(f)(1).

(E) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility but not primary withholding under chapter 3 and chapter 4.* (*1*) If a payment is made to a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility for the payment (but does not assume primary withholding responsibility under chapters 3 and 4 of the Code), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to a withholding rate pool or pools provided as part of the qualified intermediary's withholding statement and the portion of the payment for which the qualified intermediary assumes primary Form 1099 reporting and backup withholding responsibility. See paragraph (e)(5)(v)(C)(*2*) of this section for when a qualified intermediary may include a chapter 4 withholding rate pool on a withholding statement provided to a withholding agent with respect to a withholdable payment.

(*2*) The following example illustrates the rules of paragraph (b)(2)(vii)(D)(*1*) of this section:

Example. WA, a withholding agent, makes a payment of U.S. source dividends that is a withholdable payment to QI, a qualified intermediary that is a participating FFI. QI has provided WA with a valid qualified intermediary withholding certificate. QI states on its withholding statement accompanying the certificate that it assumes primary Form 1099 reporting and backup withholding responsibility but does not assume primary withholding responsibility under chapters 3 and 4 of the Code. QI represents that 15% of the dividend is subject to a 30% rate of withholding, 75% of the dividend is subject to a 15% rate of withholding. QI represents that it assumes primary Form 1099 reporting and backup withholding for the remaining 10% of the payment and will not need to provide a chapter 4 withholding rate pool with respect to this portion of the payment or documentation with respect to U.S. non-exempt recipients. WA can reliably associate the entire payment with valid documentation.

(F) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and chapter 4 and primary Form 1099 reporting and backup withholding responsibility and a withholding certificate provided by a withholding foreign partnership or a withholding foreign trust.* If a payment is made to a qualified intermediary that assumes both primary withholding responsibility under chapters 3 and 4 of the Code and primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Code for the payment, a withholding agent can reliably associate a payment with valid documentation provided that it receives a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section. In the case of a payment made to a withholding foreign partnership or a withholding foreign trust, the withholding agent can reliably associate the payment with valid documentation to the extent it can associate the payment with a valid withholding certificate described in § 1.1441–5(c)(2)(iv) or in § 1.1441–5(e)(5)(v) (respectively). See paragraph (e)(5)(iv) of this section, providing that a qualified intermediary assuming primary withholding responsibility under chapter 3 must also assume primary withholding responsibility under chapter 4 with respect to a withholdable payment.

(3) *Presumptions regarding payee's status in the absence of documentation*—(i) *General rules.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (b)(2)(vii) of this section) a payment of an amount subject to withholding (as described in § 1.1441–2(a)) with valid documentation may rely on the presumptions of this paragraph (b)(3) to determine the status of the person receiving the payment as a U.S. or a foreign person and the person's other relevant characteristics (*e.g.,* as an owner or intermediary, as an individual, trust, partnership, or corporation). The determination of withholding and reporting requirements applicable to payments to a person presumed to be a foreign person is governed only by the provisions of chapters 3 and 4 of the Code and the regulations thereunder. For the determination of withholding and reporting requirements applicable to payments to a person presumed to be a U.S. person, see chapter 61 of the Code, section 3402, 3405, or 3406, and, with respect to the reporting requirements of a participating FFI or registered deemed-compliant FFI, see chapter 4 of the Code and the related regulations. A presumption that a payee is a foreign payee is not a presumption that the payee is a foreign beneficial owner. Therefore, the provisions of this paragraph (b)(3) have no effect for purposes of reducing the withholding rate if associating the payment with documentation of foreign beneficial ownership is required as a condition for such rate reduction. See paragraph (b)(3)(ix) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (b)(3) or if the withholding agent has actual knowledge or reason to know of facts that are contrary to the presumptions set forth in this paragraph (b)(3). See paragraph (b)(2)(vii) of this section for rules regarding the extent to which a withholding agent can reliably associate a payment with documentation.

(ii) *Presumptions of classification as individual, corporation, partnership, etc.*—(A) *In general.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate or that has received valid documentary evidence under §§ 1.1441–1(e)(1)(ii)(A)(*2*) and 1.6049–5(c)(1) or (4) but cannot determine a payee's classification from the documentary evidence must apply the rules of this paragraph (b)(3)(ii) to determine the payee's classification as an individual, trust, estate, corporation, or partnership. The fact that a payee is presumed to have a certain status under the provisions of this paragraph (b)(3)(ii) does not mean that it is excused from furnishing documentation if documentation is otherwise required to obtain a reduced rate of withholding under this section. For example, if, for purposes of this paragraph (b)(3)(ii), a payee is presumed to be a tax-exempt organization based on § 1.6049–4(c)(1)(ii)(B), the withholding agent cannot rely on this presumption to reduce the rate of withholding on payments to such person (if such person is also presumed to be a foreign person under paragraph (b)(3)(iii)(A) of this

section) because a reduction in the rate of withholding for payments to a foreign tax-exempt organization generally requires that a valid Form W–8 described in § 1.1441–9(b)(2) be furnished to the withholding agent.

(B) *No documentation provided.* If the withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documentary evidence, it must presume that the payee is an individual, a trust, or an estate, if the payee appears to be such person (*e.g.,* based on the payee's name or information in the customer file). In the absence of reliable indications that the payee is an individual, a trust, or an estate, the withholding agent must presume that the payee is a corporation or one of the persons enumerated under § 1.6049–4(c)(1)(ii)(B) through (Q) if it can be so treated under § 1.6049–4(c)(1)(ii)(A)(*1*) or any one of the paragraphs under § 1.6049–4(c)(1)(ii)(B) through (Q) without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049–4(c)(1)(ii)(A)(*1*) through (Q), then the payee shall be presumed to be a partnership. If such a partnership is presumed to be foreign, it is not the beneficial owner of the income paid to it. See paragraph (c)(6) of this section. If such a partnership is presumed to be domestic, it is a U.S. non-exempt recipient for purposes of chapter 61 of the Code.

(C) *Documentary evidence furnished for offshore obligation.* If the withholding agent receives valid documentary evidence, as described in § 1.6049–5(c)(1) or (c)(4), with respect to an offshore obligation from an entity but the documentary evidence does not establish the entity's classification as a corporation, trust, estate, or partnership, the withholding agent may presume (in the absence of actual knowledge otherwise) that the entity is the type of person enumerated under § 1.6049–4 (c)(1)(ii)(B) through (Q) if it can be so treated under any one of those paragraphs without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049–4(c)(1)(ii)(B) through (Q), then the payee shall be presumed to be a corporation unless the withholding agent knows, or has reason to know, that the entity is not classified as a corporation for U.S. tax purposes. If a payee is, or is presumed to be, a corporation under this paragraph (b)(3)(ii)(C) and a foreign person under paragraph (b)(3)(iii) of this section, a withholding agent shall not treat the payee as the beneficial owner of income if the withholding agent knows, or has reason to know, that the payee is not the beneficial owner of the income. For this purpose, a withholding agent will have reason to know that the payee is not a beneficial owner if the documentary evidence indicates that the payee is a bank, broker, intermediary, custodian, or other agent, or is treated under § 1.6049–4(c)(1)(ii)(B) through (Q) as such a person. A withholding agent may, however, treat such a person as a beneficial owner if the foreign person provides a statement, in writing and signed by a person with authority to sign the statement, that is attached to the documentary evidence and that states that the foreign person is the beneficial owner of the income.

(iii) *Presumption of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (b)(3)(iii), in paragraphs (b)(3)(iv) and (v) of this section, or in § 1.1441–5(d) or (e). A withholding agent must treat a payee that is presumed or known to be a trust but for which the withholding agent cannot determine the type of trust in accordance with the presumptions specified in § 1.1441–5(e)(6)(ii). In the case of a payment that is a withholdable payment, a withholding agent must apply the presumption rule under § 1.1471–3(f) for purposes of chapter 4.

(A) *Payments to exempt recipients*—(*1*) *In general.* If a withholding agent cannot reliably associate a payment with documentation from the payee and the payee is an exempt recipient (as determined under the provisions of § 1.6049–4(c)(1)(ii) in the case of interest, or under similar provisions under chapter 61 of the Code applicable to the type of payment involved, but not including a payee that the withholding agent may treat as a foreign intermediary in accordance with paragraph (b)(3)(v) of this section), the payee is presumed to be a foreign person and not a U.S. person—

(*i*) If the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits ''98'';

(*ii*) If the withholding agent's communications with the payee are mailed to an address in a foreign country;

(*iii*) If the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in § 301.7701–2(b)(8)(i) of this chapter (and, in the case of a name which contains the designation ''corporation'' or ''company,'' the withholding agent has a document that reasonably demonstrates the payee was incorporated in the relevant jurisdiction);

(*iv*) If the payment is made with respect to an offshore obligation (as defined in paragraph (c)(37) of this section); or

(*v*) With respect to an account opened after July 1, 2014, if the withholding agent has a telephone number for the person outside of the United States.

(*2*) *Special rule for withholdable payments made to exempt recipients.* Notwithstanding the provisions of paragraph (b)(3)(iii)(A)(*1*) of this section, a payment that is also a withholdable payment made to an entity determined to be an exempt recipient under § 1.6049–4(c)(1)(ii)(A)(*1*), (F), (G), (H), (M), (O), (P), or (Q) in the case of interest (or under similar provisions in chapter 61 applicable to the type of income) shall be presumed made to a foreign payee in the absence of documentation (including documentary evidence) establishing the entity as a U.S. person. Additionally, a withholding agent may apply the rule provided in this paragraph (b)(3)(iii)(A)(*2*) instead of the rule in provided in paragraph (b)(3)(iii)(A)(*1*) of this section for all payments with respect to an obligation. The provisions of this paragraph (b)(3)(iii)(A)(*2*) will not apply, however, to a withholdable payment made with respect to a preexisting obligation to a payee that the withholding agent determined prior to July 1, 2014, to be a U.S. exempt recipient.

* * * * *

(D) *Payments with respect to offshore obligations.* A payment is presumed made to a foreign payee if the payment is made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore obligation (as defined in paragraph (c)(37) of this section) and the withholding agent does not have actual knowledge that the payee is a U.S. person. See § 1.6049–5(d)(2) and (3) for exceptions to this rule.

* * * * *

(iv) *Grace period.* A withholding agent may choose to apply the provisions of § 1.6049–5(d)(2)(ii) regarding a 90-day grace period for purposes of this paragraph (b)(3) (by applying the term withholding agent instead of the term payor) to amounts described in § 1.1441–6(c)(2) and to amounts covered by a Form 8233 described in § 1.1441–4(b)(2)(ii). Thus, for these amounts, a withholding agent may choose to treat the payee as a foreign person and withhold under chapter 3 of the Code (and the regulations thereunder) while awaiting documentation. For purposes of

determining the rate of withholding under this section, the withholding agent must withhold at the unreduced 30-percent rate at the time that the amounts are credited to an account. For reporting of amounts credited both before and after the grace period, see § 1.1461–1(c)(4)(i)(A). The following adjustments shall be made at the expiration of the grace period:

(A) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a U.S. non-exempt recipient, then backup withholding only applies to amounts credited to the account after the expiration of the grace period. Amounts credited to the account during the grace period shall be treated as owned by a foreign payee and adjustments must be made to correct any underwithholding on such amounts in the manner described in § 1.1461–2.

* * * * *

(v) * * *

(B) *Beneficial owner documentation or allocation information is lacking or unreliable.* Except as otherwise provided in this paragraph (b)(3)(v)(B), any portion of a payment that the withholding agent may treat as made to a foreign intermediary (whether a nonqualified or a qualified intermediary) but that the withholding agent cannot treat as reliably associated with valid documentation under the rules of paragraph (b)(2)(vii) of this section is presumed made to an unknown, undocumented foreign payee. As a result, a withholding agent must deduct and withhold 30 percent from any payment of an amount subject to withholding. If a withholding certificate attached to an intermediary certificate is another intermediary withholding certificate or a flow-through withholding certificate, the rules of this paragraph (b)(3)(v)(B) (or § 1.1441–5(d)(3) or (e)(6)(iii)) apply by treating the portion of the payment allocable to the other intermediary or flow-through entity as if it were made directly to the other intermediary or flow-through entity. Any payment of an amount subject to withholding that is presumed made to an undocumented foreign person must be reported on Form 1042–S. See § 1.1461–1(c). See § 1.6049–5(d) for payments that are not subject to withholding under chapter 3. However, in the case of a payment that is a withholdable payment made to a foreign intermediary, the presumption rules under § 1.1471–3(f)(5) shall apply.

(vi) *U.S. branches and territory financial institutions not treated as U.S. persons.* The rules of paragraph (b)(3)(v)(B) of this section shall apply to payments to a U.S. branch or a territory financial institution described in paragraph (b)(2)(iv)(A) of this section that has provided a withholding certificate as described in paragraph (e)(3)(v) of this section on which it has not agreed to be treated as a U.S. person.

(vii) *Joint payees*—(A) *In general.* Except as provided in paragraph (b)(3)(vii)(B) of this section and this paragraph (b)(3)(vii)(A), if a withholding agent makes a payment to joint payees and cannot reliably associate the payment with valid documentation from all payees, the payment is presumed made to an unidentified U.S. person. If, however, a withholding agent makes a payment that is a withholdable payment and any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire amount of the payment will be treated as made to an undocumented foreign person. See paragraph (b)(3)(iii) of this section for presumption rules that apply in the case of a payment that is a withholdable payment. However, if one of the joint payees provides a Form W–9 furnished in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, the payment shall be treated as made to that payee. See § 31.3406(h)–2 of this chapter for rules to determine the relevant payee if more than one Form W–9 is provided. For purposes of applying this paragraph (b)(3), the grace period rules in paragraph (b)(3)(iv) of this section shall apply only if each payee meets the conditions described in paragraph (b)(3)(iv) of this section.

(B) *Special rule for offshore obligations.* If a withholding agent makes a payment to joint payees and cannot reliably associate a payment with valid documentation from all payees, the payment is presumed made to an unknown foreign payee if the payment is made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)).

* * * * *

(ix) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(A) *General rule.* Except as otherwise provided in paragraph (b)(3)(ix)(B) of this section, a withholding agent that withholds on a payment under section 3402, 3405, or 3406 in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under this section even if it is later established that the beneficial owner of the payment is, in fact, a foreign person. Similarly, a withholding agent that withholds on a payment under this section in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under section 3402 or 3405 or for backup withholding under section 3406 even if it is later established that the payee or beneficial owner is, in fact, a U.S. person. A withholding agent that, instead of relying on the presumptions described in this paragraph (b)(3), relies on its own actual knowledge to withhold a lesser amount, not withhold, or not report a payment, even though reporting of the payment or withholding a greater amount would be required if the withholding agent relied on the presumptions described in this paragraph (b)(3), shall be liable for tax, interest, and penalties to the extent provided under section 1461 and the regulations under that section. See paragraph (b)(7) of this section for provisions regarding such liability if the withholding agent fails to withhold in accordance with the presumptions described in this paragraph (b)(3).

* * * * *

(x) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

Example 1. A withholding agent, W, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471–2(b) (and thus the payment is not a withholdable payment) to X, Inc. with respect to an account W maintains for X, Inc. outside the United States. W cannot reliably associate the payment to X, Inc. with documentation. Under § 1.6049–4(c)(1)(ii)(A)(*1*), W may treat X, Inc. as a corporation that is an exempt recipient under chapter 61. Thus, under the presumptions described in paragraph (b)(3)(iii) of this section as applicable to a payment to an exempt recipient that is not a withholdable payment, W must presume that X, Inc. is a foreign person (because the payment is made with respect to an offshore obligation). However, W knows that X, Inc. is a U.S. person who is an exempt recipient. W may not rely on its actual knowledge to not withhold under this section. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 1461. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that the tax is not due or has been satisfied. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 1461 for the amount that W should have withheld based upon the presumptions. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that its actual knowledge was, in fact, correct and that no tax or a lesser amount of tax was due.

Example 2. A withholding agent, W, makes a payment of U.S. source interest with respect to a grandfathered obligation as described in § 1.1471–2(b) (and thus the payment is not a withholdable payment) to Y who does not qualify as an exempt recipient under § 1.6049–4(c)(1)(ii). W cannot reliably associate the payment to Y with documentation. Under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that Y is a U.S. person who is not an exempt recipient for purposes of section 6049. However, W knows that Y is a foreign person. W may not rely on its actual knowledge to withhold under this section rather than backup withhold under section 3406. If W's knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 3403. If W's actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 3403 for the amount that W should have withheld based upon the presumptions. Paragraph (b)(7) of this section does not apply to provide relief from liability under section 3403.

Example 3. A withholding agent, W, makes a payment of U.S. source dividends to X, Inc. with respect to an account that X, Inc. opened with W after June 30, 2014. W cannot reliably associate the payment to X, Inc. with documentation but may treat X, Inc. as an exempt recipient for purposes of this section applying the rules of § 1.6042–3(b)(1)(vii). However, because the dividend payment is a withholdable payment and W did not determine the chapter 3 status of X, Inc. before July 1, 2014, W may treat X, Inc. as a U.S. person that is an exempt recipient only if W obtains documentary evidence supporting X, Inc.'s status as a U.S. person. See paragraph (b)(3)(iii)(A)(*2*) of this section.

Example 4. A withholding agent, W, is a plan administrator who makes pension payments to person X with a mailing address in a foreign country with which the United States has an income tax treaty in effect. Under that treaty, the type of pension income paid to X is taxable solely in the country of residence. The plan administrator has a record of X's U.S. social security number. W has no actual knowledge or reason to know that X is a foreign person. W may rely on the presumption of paragraph (b)(3)(iii)(C) of this section in order to treat X as a U.S. person. Therefore, any withholding and reporting requirements for the payment are governed by the provisions of section 3405 and the regulations under that section.

(4) *List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.* A withholding agent that has determined that the payee is a foreign person for purposes of paragraph (b)(1) of this section must determine whether the payee is entitled to a reduced rate of withholding under section 1441, 1442, or 1443. This paragraph (b)(4) identifies items for which a reduction in the rate of withholding may apply and whether the rate reduction is conditioned upon documentation being furnished to the withholding agent. Documentation required under this paragraph (b)(4) is documentation that a withholding agent must be able to associate with a payment upon which it can rely to treat the payment as made to a foreign person that is the beneficial owner of the payment in accordance with paragraph (e)(1)(ii) of this section. This paragraph (b)(4) also cross-references other sections of the Code and applicable regulations in which some of these exceptions, exemptions, or reductions are further explained. See, for example, paragraph (b)(4)(viii) of this section, dealing with effectively connected income, that cross-references § 1.1441–4(a); see paragraph (b)(4)(xv) of this section, dealing with exemptions from, or reductions of, withholding under an income tax treaty, that cross-references § 1.1441–6. This paragraph (b)(4) is not an exclusive list of items to which a reduction of the rate of withholding may apply and, thus, does not preclude an exemption from, or reduction in, the rate of withholding that may otherwise be allowed under the regulations under the provisions of chapter 3 of the Code for a particular item of income identified in this paragraph (b)(4). The exclusions and limitations specified in this paragraph (b)(4) apply for purposes of chapter 3. Additional withholding and documentation requirements may apply to withholding agents under chapter 4 with respect to payments that are withholdable payments. See, for example, § 1.1471–2(a) requiring withholding on withholdable payments made to certain FFIs and § 1.1471–2(a)(4) for payments exempted from withholding under section 1471(a).

(i) Portfolio interest described in section 871(h) or 881(c) and substitute interest payments described in § 1.871–7(b)(2) or § 1.881–2(b)(2) are exempt from withholding under section 1441(a). See § 1.871–14 for regulations regarding portfolio interest and section 1441(c)(9) for the exemption from withholding for portfolio interest. Documentation establishing foreign status is required for interest on an obligation in registered form to qualify as portfolio interest. See section 871(h)(2)(B)(ii) and § 1.871–14(c)(1)(ii)(C). For special documentation rules regarding foreign-targeted registered obligations described in § 1.871–14(e)(2) (and issued before January 1, 2016), see § 1.871–14(e)(3) and (4) and, in particular, § 1.871–14(e)(4)(i)(A) and (ii)(A) regarding when the withholding agent must receive the documentation. The documentation furnished for purposes of qualifying interest as portfolio interest serves as the basis for the withholding exemption for purposes of this section and establishing foreign status for purposes of section 6049. See § 1.6049–5(b)(8). Documentation establishing foreign status is not required for qualifying interest on an obligation in bearer form described in § 1.871–14(b)(1) (and issued before March 19, 2012) as portfolio interest. However, in certain cases, documentation for portfolio interest on a bearer obligation may have to be furnished in order to establish foreign status for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049–5(b)(7).

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(ix) Payments to a foreign person that are governed by section 6050W (dealing with payment card and third party network transactions) are exempt from information reporting under § 1.6050W–1(a)(5)(ii).

(6) *Rules of withholding for payments by a foreign intermediary or certain U.S. branches*—(i) *In general.* A foreign intermediary described in paragraph (e)(3)(i) of this section or a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section that receives an amount subject to withholding (as defined in § 1.1441–2(a)) shall be required to withhold (if another withholding agent has not withheld the full amount required) and report such payment under chapter 3 of the Code and the regulations thereunder except as otherwise provided in this paragraph (b)(6). A nonqualified intermediary, U.S. branch, or territory financial institution described in paragraph (b)(2)(iv) of this section (other than a U.S. branch or territory financial institution that is treated as a U.S. person) shall not be required to withhold or report if it has provided a valid nonqualified intermediary withholding certificate or a U.S. branch withholding certificate, it has provided all of the information required by paragraph (e)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1461–1(c). The withholding requirement of a nonqualified intermediary under the previous sentence also excludes a case in which withholding under chapter 4 was applied by a withholding agent on the

payment. See § 1.1441–3(a)(2) (coordinating withholding under chapter 3 with withholding applied under chapter 4 of the Code). A qualified intermediary's obligations to withhold and report shall be determined in accordance with its qualified intermediary withholding agreement.

(ii) *Examples.* The following examples illustrate the rules of paragraph (b)(6)(i) of this section and coordinate rules for withholding that apply under chapter 4 with those that apply under chapter 3. See also paragraph (e)(3)(iv)(C) of this section for the requirements of withholding statements provided by nonqualified intermediaries.

Example 1. FB, a foreign bank, acts as intermediary for five different individuals, A, B, C, D, and E, each of whom owns U.S. securities that generate U.S. source dividends (that are withholdable payments). The dividends are paid by USWA, a U.S. withholding agent. FB furnished USWA with a nonqualified intermediary withholding certificate, described in paragraph (e)(3)(iii) of this section, on which FB certifies its status as a participating FFI (such that withholding under chapter 4 does not apply), to which it attached valid withholding certificates for A, B, C, D, and E. The withholding certificates from A and B claim a 15% reduced rate of withholding under an income tax treaty. C, D, and E claim no reduced rate of withholding. FB provides a withholding statement that meets all of the requirements of paragraph (e)(3)(iv) of this section, including information allocating 20% of each dividend payment to each of A, B, C, D, and E. FB does not have actual knowledge or reason to know that USWA did not withhold the correct amounts or report the dividends on Forms 1042–S to each of A, B, C, D, and E. FB is not required to withhold or to report the dividends to A, B, C, D, and E.

Example 2. The facts are the same as in *Example 1,* except that FB did not provide any information for USWA to determine how much of the dividend payments were made to A, B, C, D, and E. Because USWA could not reliably associate the dividend payments with documentation under paragraph (b)(2)(vii) of this section with respect to a payment that is a withholdable payment, USWA applied the presumption rule of § 1.1471–3(f)(5) and withheld 30% from all dividend payments under chapter 4 and filed a Form 1042–S reporting the payment to an account holder of FB that is a non-participating FFI. FB is deemed to know that USWA did not report the payment to A, B, C, D, and E because it did not provide all of the information required on a withholding statement under paragraph (e)(3)(iv) of this section (*i.e.,* allocation information). Although FB is not required to withhold on the payment under this section because the full 30% withholding was imposed by USWA, it is required to report the payments on Forms 1042–S to A, B, C, D, and E. FB's intentional failure to do so will subject it to intentional disregard penalties under sections 6721 and 6722.

(7) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions*—(i) *General rule.* A withholding agent that cannot reliably associate a payment with valid documentation on the date of payment and that does not withhold under this section, or withholds at less than the 30-percent rate prescribed under section 1441(a) and paragraph (b)(1) of this section, is liable under section 1461 for the tax required to be withheld under chapter 3 of the Code and the regulations thereunder, without the benefit of a reduced rate unless—

(A) The withholding agent has appropriately relied on the presumptions described in paragraph (b)(3) of this section (including the grace period described in paragraph (b)(3)(iv) of this section) in order to treat the payee as a U.S. person or, if applicable, on the presumptions described in § 1.1441–4(a)(2)(ii) or (a)(3)(i) to treat the payment as effectively connected income;

(B) The withholding agent can demonstrate to the satisfaction of the district director or the Assistant Commissioner (International) that the proper amount of tax, if any, was in fact paid to the IRS;

(C) No documentation is required under section 1441 or this section in order for a reduced rate of withholding to apply; or

* * * * *

(ii) *Proof that tax liability has been satisfied*—(A) *In general.* Proof of payment of tax may be established for purposes of paragraph (b)(7)(i)(B) of this section on the basis of a Form 4669 (or such other form as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter)) establishing the amount of tax, if any, actually paid by or for the beneficial owner on the income. Proof that a reduced rate of withholding was, in fact, appropriate under the provisions of chapter 3 of the Code and the regulations thereunder may also be established after the date of payment by the withholding agent on the basis of a valid withholding certificate or other appropriate documentation received after that date that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A withholding certificate received within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain the affidavit described in the preceding sentence. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence, as described in § 1.1471–3(c)(5)(i), that supports the individual's claim of foreign status or documentary evidence described in § 1.1441–6(c)(4)(i) to support any treaty claim made on the certificate. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in § 1.1471–3(c)(5)(i) that supports the entity's claim of foreign status or documentary evidence described in § 1.1441–6(c)(4)(ii) to support any treaty claim made on the certificate. If documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to obtain from the payee a withholding certificate and affidavit supporting the claim of chapter 3 status as of the time of the payment. See, however, paragraph (b)(7)(ii)(B) of this section for special rules that apply when a withholding certificate is received after the date of the payment to claim that income is effectively connected with the conduct of a U.S. trade or business. See § 1.1471–3(c)(7)(ii) for additional requirements that may apply under chapter 4 for documentation obtained after the date of payment of a withholdable payment.

(B) [Reserved]. For further guidance, see § 1.1441–1T(b)(7)(ii)(B).

* * * * *

(iv) *Special rule for determining validity of withholding certificate containing inconsequential errors.* A withholding agent may treat a withholding certificate as valid when the certificate includes an error described as an inconsequential error in § 1.1471–3(c)(7)(i) for which the withholding agent obtains documentation sufficient for supporting a payee's claim of status as a foreign person or, for a payee that is an entity, its classification to the extent permitted under § 1.1471–3(c)(7)(i). For example, if the country of residence is abbreviated in an ambiguous way on a

beneficial owner withholding certificate provided to establish the beneficial owner's foreign status, a withholding agent may treat the withholding certificate as valid if it has obtained documentary evidence supporting that the beneficial owner's residence is in a country other than the United States.

(v) *Special effective date.* See paragraph (f)(2)(ii) of this section for the special effective date applicable to this paragraph (b)(7).

* * * * *

(c) *Definitions.* The following definitions apply for purposes of sections 1441 through 1443, 1461, and regulations under those sections. For definitions of terms used in these regulations that are defined under sections 1471 through 1474, see subparagraphs (43) through (56) of this paragraph.

* * * * *

(2) *Foreign and U.S. person*—(i) *In general.* The term foreign person means any person that is not a U.S. person, including a QI branch of a U.S. financial institution (as defined in § 1.1471–1(b)(109). Such a branch continues to be a U.S. payor for purposes of chapter 61 of the Code. See § 1.6049–5(c)(4). A U.S. person is a person described in section 7701(a)(30), the U.S. 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).

(ii) [Reserved]. For further guidance, see § 1.1441–1T(c)(2)(ii).

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.1441–1T(c)(3)(ii).

* * * * *

(5) *Financial institution and foreign financial institution (or FFI).* The term financial institution means a person described in § 1.1471–1(b)(50). The term foreign financial institution or FFI has the meaning set forth in § 1.1471–1(b)(47).

* * * * *

(10) *Chapter 3 of the Code (or chapter 3).* For purposes of the regulations under sections 1441, 1442, and 1443, any reference to chapter 3 of the Code (or chapter 3) shall not include references to sections 1445 and 1446, unless the context indicates otherwise.

* * * * *

(12) *Payee.* For purposes of chapter 3 of the Code, the term payee of a payment is determined under paragraph (b)(2) of this section, § 1.1441–5(c)(1) (relating to partnerships), and § 1.1441–5(e)(2) and (3) (relating to trusts and estates) and includes foreign persons, U.S. exempt recipients, and U.S. non-exempt recipients. A nonqualified intermediary and a qualified intermediary (to the extent it does not assume primary withholding responsibility) are not payees if they are acting as intermediaries and not the beneficial owner of income. In addition, a flow-through entity (other than a withholding foreign partnership, withholding foreign trust, or qualified intermediary that assumes primary withholding responsibility) is not a payee unless the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States. See § 1.6049–5(d)(1) for rules to determine the payee for purposes of chapter 61 of the Code. See §§ 1.1441–1(b)(3), 1.1441–5(d), and (e)(6) and § 1.6049–5(d)(3) for presumption rules that apply if a payee's identity cannot be determined on the basis of valid documentation. For purposes of chapter 4, the term payee has the meaning set forth in § 1.1471–3(a) with respect to a withholdable payment.

* * * * *

(16) *Withholding certificate.* The term withholding certificate means a Form W–8 described in paragraph (e)(2)(i) of this section (relating to foreign beneficial owners), paragraphs (e)(3)(i) or (e)(5)(i) of this section (relating to foreign intermediaries or qualified intermediaries), § 1.1441–5(c)(2)(iv), (c)(3)(iii), and (e)(5)(iii) (relating to flow-through entities), a Form 8233 described in § 1.1441–4(b)(2), a Form W–9 as described in paragraph (d) of this section, a statement described in § 1.871–14(c)(2)(v) (relating to portfolio interest), or any other certificates that under the Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or a foreign person.

(17) *Documentary evidence; other appropriate documentation.* The terms documentary evidence or other appropriate documentation refer to documentary evidence that may be provided for payments made outside the United States with respect to offshore obligations in accordance with § 1.6049–5(c)(1) or any other evidence that under the Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or foreign person. See §§ 1.1441–6(b)(2), (c)(3) and (4) (relating to treaty benefits), and 1.6049–5(c)(1) and (4) (relating to chapter 61 reporting). Also see § 1.1441–4(a)(3)(ii) regarding documentary evidence for notional principal contracts.

* * * * *

(23) *Flow-through entity.* A flow-through entity means any entity that is described in this paragraph (c)(23) and that may provide documentation on behalf of its partners, beneficiaries, or owners to a withholding agent. The entities described in this paragraph are a foreign partnership (other than a withholding foreign partnership), a foreign simple trust (other than a withholding foreign trust) that is described in paragraph (c)(24) of this section, a foreign grantor trust (other than a withholding foreign trust) that is described in paragraph (c)(26) of this section, or, for any payments for which a reduced rate of withholding under an income tax treaty is claimed, any entity to the extent the entity is considered to be fiscally transparent under section 894 with respect to the payment by an interest holder's jurisdiction.

* * * * *

(25) *Foreign complex trust.* A foreign complex trust is a foreign trust other than a foreign simple trust or foreign grantor trust.

* * * * *

(28) *Nonwithholding foreign partnership (or NWP).* A nonwithholding foreign partnership is a foreign partnership that is not a withholding foreign partnership, as defined in § 1.1441–5(c)(2)(i).

(29) *Withholding foreign partnership (or WP).* A withholding foreign partnership is defined in § 1.1441–5(c)(2)(i).

(30) *Possessions of the United States or U.S. territory.* For purposes of the regulations under chapters 3 and 61 of the Code, the term possessions of the United States or U.S. territory means Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands.

(31) *Amount subject to chapter 3 withholding.* An amount subject to withholding under chapter 3 is an amount described in § 1.1441–2(a).

(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).

(33) *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.

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

(35) *Intermediary withholding certificate.* The term intermediary withholding certificate means a Form W–8IMY submitted by an intermediary or qualified intermediary.

(36) *Nonwithholding foreign trust (or NWT).* The term nonwithholding foreign trust or NWT 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.

(37) *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 (as defined in § 1.6049–5(c)(1), § 1.6041–1(d), or § 1.6042–3(b) (depending on the type of payment)).

(38) *Permanent residence address*—(i) *In general.* 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. In the case of a withholding certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, whether a person is a resident of a treaty country must be determined in the manner prescribed under the applicable treaty. See § 1.1441–6(b). 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 residence 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 of the entity is the place at which the person maintains its principal office.

(ii) [Reserved]. For further guidance, see § 1.1441–1T(c)(38)(ii).

(39) *Standing instructions to pay amounts.* The term standing instructions to pay amounts has the meaning set forth in § 1.1471–1(b)(126).

(40) *Territory financial institution.* The term territory financial institution has the meaning set forth in § 1.1471–1(b)(130).

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

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

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

(44) *Chapter 3 withholding rate pool.* The term chapter 3 withholding rate pool has the meaning described in paragraph (e)(5)(v)(C)(*1*) of this section.

(45) *Chapter 3 status.* The term chapter 3 status refers to the attributes of a payee relevant for determining the rate of withholding with respect to a payment made to the payee for purposes of chapter 3.

(46) *Chapter 4 of the Code (or chapter 4).* The term chapter 4 of the Code (or chapter 4) means sections 1471 through 1474 and the regulations thereunder.

(47) *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.

(48) *Chapter 4 withholding rate pool.* The term chapter 4 withholding rate pool has the meaning set forth § 1.1471–1(b)(20). For when a withholding statement may include a chapter 4 withholding rate pool of U.S. payees for purposes of this section and § 1.1441–5, however, see paragraph (e)(3)(iv)(A) of this section (for a withholding statement provided by a nonqualified intermediary) or paragraph (e)(5)(v)(C)(*2*) of this section (for a withholding statement provided by a qualified intermediary).

(49) *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.

(50) *GIIN (or Global Intermediary Identification Number).* 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 (as defined in § 1.1471–1(b)(114)) for purposes of identifying such entity to withholding agents. All GIINs will appear on the IRS FFI list.

(51) *NFFE.* The term NFFE or non-financial foreign entity has the meaning set forth in § 1.1471–1(b)(80).

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

(53) *Participating FFI.* The term participating FFI has the meaning set forth in § 1.1471–1(b)(91).

(54) *Preexisting obligation.* The term preexisting obligation has the meaning set forth in § 1.1471–1(b)(104).

(55) *Registered deemed-compliant FFI.* The term registered deemed-compliant FFI has the meaning set forth in § 1.1471–5(f)(1).

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

(d) * * *

(4) *When a payment to an intermediary or flow-through entity may be treated as made to a U.S. payee.* A withholding agent that makes a payment to an intermediary (whether a qualified intermediary or nonqualified intermediary), a flow-through entity, or a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section may treat the payment as made to a U.S. payee to the extent that, prior to the payment, the withholding agent can reliably associate the payment with a Form W–9 described in paragraph (d)(2) or (3) of this section attached to a valid intermediary, flow-through, or U.S. branch withholding certificate described in paragraph (e)(3)(i) of this section or to the extent the withholding agent can reliably associate the payment with a Form W–8 described in paragraph (e)(3)(v) of this section that evidences an agreement to treat a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section as a U.S. person. In addition, a withholding agent may treat the payment as made to a U.S. payee only if it complies with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section, if required, and it has not been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. In the case of a Form W–9 that is required to be furnished for a reportable payment that may be subject to backup withholding, the withholding agent may be notified in accordance with section 3406(a)(1)(B) and the regulations under that section. See applicable procedures under section 3406(a)(1)(B) and the regulations under that section for payors who have been notified with regard to such a Form W–

9. Withholding agents who have been notified in relation to other Forms W–9, including under section 6724(b) pursuant to section 6721, may rely on the withholding certificate or other documentation only to the extent provided under procedures as prescribed by the IRS (see § 601.601(d)(2) of this chapter).

(e) * * *

(1) * * *

(ii) * * *

(A) * * *

(*2*) That the payment is made outside the United States (within the meaning of § 1.6049–5(e)) with respect to an offshore obligation (within the meaning of paragraph (c)(37) of this section) and the withholding agent can reliably associate the payment with documentary evidence described in §§ 1.1441–6(c)(3) or (4), or 1.6049–5(c)(1) relating to the beneficial owner;

(*3*) That the withholding agent can reliably associate the payment with a valid qualified intermediary withholding certificate, as described in paragraph (e)(3)(ii) of this section, and the qualified intermediary has provided sufficient information for the withholding agent to allocate the payment to a chapter 3 withholding rate pool;

* * * * *

(2) * * *

(ii) *Requirements for validity of certificate*—(A) *In general.* A beneficial owner withholding certificate is valid for purposes of a payment of an amount subject to chapter 3 withholding only if it is provided on a Form W–8 or a Form 8233 in the case of personal services income described in § 1.1441–4(b) or certain scholarship or grant amounts described in § 1.1441–4(c) (or a substitute form described in paragraph (e)(4)(vi) of this section or such other form as the IRS may prescribe). A Form W–8 is valid only if its validity period has not expired, it is signed under penalties of perjury by the beneficial owner, and it contains all of the information required on the form. The required information is the beneficial owner's name, permanent residence address (as defined in § 1.1441–1(c)(38)), TIN (if required), a certification that the person is not a U.S. citizen (if the person is an individual) or a certification of the country under the laws of which the beneficial owner is created, incorporated, or governed (if a person other than an individual), the classification of the entity, and such other information as may be required by the regulations under section 1441 or by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (e)(2)(ii) (including when a foreign TIN and an individual's date of birth are required). A beneficial owner withholding certificate must also include the chapter 4 status of a beneficial owner when required for chapter 4 purposes in order to be valid. See paragraph (e)(4)(vii) of this section for circumstances in which a TIN is required on a beneficial owner withholding certificate.

(B) [Reserved]. For further guidance, see § 1.1441–1T(e)(2)(ii)(B).

(3) * * *

(ii) *Intermediary withholding certificate from a qualified intermediary.* A qualified intermediary shall provide a qualified intermediary withholding certificate for withholdable payments or reportable amounts received by the qualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A qualified intermediary withholding certificate is valid only if it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the qualified intermediary, its validity has not expired, and it contains the following information, statement, and certifications—

(A) The name, permanent residence address, qualified intermediary employer identification number (QI–EIN), and the country under the laws of which the qualified intermediary is created, incorporated, or governed. If required for purposes of chapter 4 or if the qualified intermediary is a participating FFI or registered deemed-compliant FFI and certifies that it is providing (or will provide) a chapter 4 withholding rate pool of U.S. payees under § 1.6049–4(c)(4) with respect to accounts that the qualified intermediary maintains, the withholding certificate must also include the chapter 4 status of the qualified intermediary and its GIIN (if applicable). See paragraph (e)(5)(ii) for the chapter 4 status required of a qualified intermediary, including when a qualified intermediary withholding certificate may include a chapter 4 status of limited FFI (as defined in § 1.1471–1(b)(77)). A qualified intermediary that does not act in its capacity as a qualified intermediary must not use its QI–EIN. Rather, it should provide a nonqualified intermediary withholding certificate, if it is acting as an intermediary, and should use the taxpayer identification number (if any) that it uses for all other purposes and GIIN (if applicable);

* * * * *

(C) A certification that the qualified intermediary has provided, or will provide, a withholding statement as required by paragraph (e)(5)(v) of this section;

(D) A certification that the qualified intermediary meets the requirements of § 1.6049–4(c)(4) when the qualified intermediary provides (or will provide) a withholding statement associated with its Form W–8 that allocates a payment to a chapter 4 withholding rate pool of U.S. payees that hold accounts with the qualified intermediary. Additionally, when the qualified intermediary provides a chapter 4 withholding rate pool of U.S. payees that do not hold accounts maintained by the qualified intermediary, the qualified intermediary provides a certification on the Form W–8 that the qualified intermediary has obtained (or will obtain) documentation from the intermediary or flow through entity allocating the payment to the pool to establish that the entity's status is as a participating FFI, registered deemed-compliant FFI, or qualified intermediary under § 1.1471–3(d)(4) (or, as applicable, § 1.1471–3(e)(4)(vi)(B) or § 1.1441–1(b)(2)(vii)); and

* * * * *

(F) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (e)(3)(ii) or paragraph (e)(3)(v) of this section. See paragraph (e)(5)(v) of this section for the requirements of a withholding statement associated with the qualified intermediary withholding certificate.

(iii) *Intermediary withholding certificate from a nonqualified intermediary.* A nonqualified intermediary shall provide a nonqualified intermediary withholding certificate for reportable amounts received by the nonqualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A nonqualified intermediary withholding certificate is valid only to the extent it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the nonqualified intermediary, it contains the information, statements, and certifications described in this paragraphs (e)(3)(iii) and (iv) of this section, its validity has not expired, and the withholding certificates and other appropriate documentation for all persons to whom the certificate relates are associated with the certificate. Withholding certificates and other

appropriate documentation consist of beneficial owner withholding certificates described in paragraph (e)(2)(i) of this section, intermediary and flow-through withholding certificates described in paragraph (e)(3)(i) of this section, withholding foreign partnership and withholding foreign trust certificates described in § 1.1441–5(c)(2)(iv) and (e)(5)(iii), documentary evidence described in §§ 1.1441–6(c)(3) or (4) and 1.6049–5(c)(1), and any other documentation or certificates applicable under other provisions of the Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. If a nonqualified intermediary is acting on behalf of another nonqualified intermediary or a flow-through entity, then the nonqualified intermediary must associate with its own withholding certificate the other nonqualified intermediary withholding certificate or the flow-through withholding certificate and separately identify all of the withholding certificates and other appropriate documentation that are associated with the withholding certificate of the other nonqualified intermediary or flow-through entity. Nothing in this paragraph (e)(3)(iii) shall require an intermediary to furnish original documentation. Copies of certificates or documentary evidence may be transmitted to the U.S. withholding agent, in which case the nonqualified intermediary must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under paragraph (e)(4)(iii) of this section and must provide it to the withholding agent upon request. For purposes of this paragraph (e)(3)(iii), a valid intermediary withholding certificate also includes a statement described in § 1.871–14(c)(2)(v) furnished for interest to qualify as portfolio interest for purposes of sections 871(h) and 881(c). The information and certifications required on a Form W–8 described in this paragraph (e)(3)(iii) are as follows—

(A) The name and permanent resident address of the nonqualified intermediary, chapter 4 status (if required for chapter 4 purposes or if the nonqualified intermediary provides the certification described in paragraph (e)(3)(iii)(D) of this section), GIIN (if applicable), and the country under the laws of which the nonqualified intermediary is created, incorporated, or governed;

* * * * *

(C) If the nonqualified intermediary withholding certificate is used to transmit withholding certificates or other appropriate documentation for more than one person on whose behalf the nonqualified intermediary is acting, a withholding statement associated with the Form W–8 that provides all the information required by paragraph (e)(3)(iv) of this section;

(D) If the nonqualified intermediary provides a withholding statement associated with the Form W–8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees, a certification that the nonqualified intermediary meets the requirements of § 1.6049–4(c)(4) with respect to any payees included in such pool that hold accounts maintained (as defined in § 1.1471–5(b)(5)) by the nonqualified intermediary; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information, certifications, and statements described in this paragraph (e)(3)(iii) or paragraph (e)(5)(iv) of this section.

(iv) *Withholding statement provided by nonqualified intermediary*—(A) *In general.* A nonqualified intermediary shall provide a withholding statement required by this paragraph (e)(3)(iv) to the extent the nonqualified intermediary is required to furnish, or does furnish, documentation for payees on whose behalf it receives reportable amounts (as defined in paragraph (e)(3)(vi) of this section) or to the extent it otherwise provides the documentation of such payees to a withholding agent. A nonqualified intermediary, however, that is subject to withholding under chapter 4 due to its chapter 4 status as a nonparticipating FFI need not provide a withholding statement unless it is providing documentation to allocate a portion of the payment as made to an exempt beneficial owner as described in § 1.1471–3(c)(3)(iii)(B)(*4*). A nonqualified intermediary that is subject to withholding under chapter 4 due to its chapter 4 status is not required to disclose to the withholding agent information regarding persons for whom it collects reportable amounts unless it has actual knowledge that any such person is a U.S. non-exempt recipient as defined in paragraph (c)(21) of this section. Information regarding U.S. non-exempt recipients required under this paragraph (e)(3)(iv) must be provided irrespective of any requirement under foreign law that prohibits the disclosure of the identity of an account holder of a nonqualified intermediary or financial information relating to such account holder. A nonqualified intermediary is not required to provide information on a withholding statement regarding U.S. non-exempt recipients, provided that the nonqualified intermediary is a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) that identifies on the withholding statement the portion of a payment allocable to a chapter 4 withholding rate pool of U.S. payees to the extent that the nonqualified intermediary is permitted to include such U.S. payees in a pool under § 1.6049–4(c)(4)(iii). See § 1.1471–3(d)(4) for the requirements of an entity to identify itself as a participating FFI or registered deemed-compliant FFI to a withholding agent for purposes of chapter 4. Although a nonqualified intermediary is not required to provide documentation and other information required by this paragraph (e)(3)(iv) for persons other than U.S. non-exempt recipients not included in a chapter 4 withholding rate pool of U.S. payees, a withholding agent that does not receive documentation and such information must apply the presumption rules of paragraph (b) of this section, §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and 1.1471–3(f)(5) (for a withholdable payment) or the withholding agent shall be liable for tax, interest, and penalties. A withholding agent must apply the presumption rules even if it is not required under chapter 61 of the Code to obtain documentation to treat a payee as an exempt recipient and even though it has actual knowledge that the payee is a U.S. person. For example, if a nonqualified intermediary receives a payment that is not a withholdable payment and fails to provide a withholding agent with a Form W–9 for an account holder that is a U.S. exempt recipient that is not included in a chapter 4 withholding rate pool of U.S. payees to the extent permitted in this paragraph (e)(3)(iv)(A), the withholding agent must presume (even if it has actual knowledge that the account holder is a U.S. exempt recipient) that the account holder is an undocumented foreign person with respect to amounts subject to chapter 3 withholding. See paragraph (b)(3)(v) of this section for applicable presumptions. Therefore, the withholding agent must withhold 30 percent from the payment even though if a Form W–9 had been provided, no withholding or reporting on the payment attributable to a U.S. exempt recipient would apply. Further, a nonqualified intermediary that fails to provide the documentation and the information under this paragraph (e)(3)(iv) for another withholding agent to report the payments on Forms 1042–

S (including under the requirements of § 1.1474–1(d)(2) for a payment of a chapter 4 reportable amount) and Forms 1099 is not relieved of its responsibility to file information returns. See paragraph (b)(6) of this section. Therefore, unless the nonqualified intermediary itself files such returns and provides copies to the payees, it shall be liable for penalties under sections 6721 (failure to file information returns), and 6722 (failure to furnish payee statements), including the penalties under those sections for intentional failure to file information returns. In addition, failure to provide either the documentation or the information required by this paragraph (e)(3)(iv) results in a payment not being reliably associated with valid documentation. Therefore, the beneficial owners of the payment are not entitled to reduced rates of withholding and if the full amount required to be held under the presumption rules is not withheld by the withholding agent, the nonqualified intermediary must withhold the difference between the amount withheld by the withholding agent and the amount required to be withheld. Failure to withhold shall result in the nonqualified intermediary being liable for tax under section 1461, interest, and penalties, including penalties under section 6656 (failure to deposit) and section 6672 (failure to collect and pay over tax).

(B) *General requirements.* A withholding statement must be provided prior to the payment of a reportable amount and must contain the information specified in paragraph (e)(3)(iv)(C) of this section. The statement must be updated as often as required to keep the information in the withholding statement correct prior to each subsequent payment. The withholding statement forms an integral part of the withholding certificate provided under paragraph (e)(3)(iii) of this section, and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement. The withholding statement may be provided in any manner the nonqualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically as part of a system established by the withholding agent or nonqualified intermediary to provide the statement, however, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the nonqualified intermediary and all occasions of user access that result in the submission or modification of the withholding statement information must be recorded. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided by the nonqualified intermediary. A withholding statement may otherwise be transmitted by a nonqualified intermediary via email or facsimile to a withholding agent under the requirements specified in paragraph (e)(4)(iv)(D) of this section (substituting the term withholding statement for the term Form W–8 or the term document, as applicable). A withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section or §§ 1.1441–5(d) and (e)(6), and 1.6049–5(d) for any payment of a reportable amount, or portion thereof, for which it does not have a valid withholding statement prior to making a payment. A withholding agent may not treat as valid an allocation of a payment to a chapter 4 withholding rate pool of U.S. payees described in paragraph (e)(3)(iv)(A) of this section or an allocation of a payment to a chapter 4 withholding rate pool of recalcitrant account holders described in paragraph (e)(3)(iv)(C)(*2*) of this section unless the withholding agent identifies the nonqualified intermediary maintaining the account (as described in § 1.1471–5(b)(5)) as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) by applying the rules of § 1.1471–3(d)(4). Additionally, in the case of a withholdable payment that is an amount subject to withholding made on or after April 1, 2017, a withholding agent may not treat as valid an allocation of the payment to a chapter 4 withholding rate pool of U.S. payees unless the nonqualified intermediary identifies the pool of U.S. payees as one described in § 1.1471–3(c)(3)(iii)(B)(*2*)(*iii*) (or by describing such payees consistent with the description provided in § 1.1471–3(c)(3)(ii)(B)(*2*)(*iii*)).

(C) *Content of withholding statement.* The withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C).

(*1*) *In general.* Except as otherwise provided by paragraph (e)(3)(iv)(C)(*2*) and (*3*) of this section), the withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C)(*1*).

(*i*) Except as otherwise provided in (e)(3)(iv)(A) of this section (which excludes reporting of information with respect to certain U.S. persons on the withholding statement), the withholding statement must contain the name, address, TIN (if any), and the type of documentation (documentary evidence, Form W–9, or type of Form W–8) for every person from whom documentation has been received by the nonqualified intermediary and provided to the withholding agent and whether that person is a U.S. exempt recipient, a U.S. non-exempt recipient, or a foreign person. See paragraphs (c)(2), (20), and (21) of this section for the definitions of foreign person, U.S. exempt recipient, and U.S. non-exempt recipient. In the case of a foreign person, the statement must indicate whether the foreign person is a beneficial owner or an intermediary, flow-through entity, U.S. branch, or territory financial institution described in paragraph (b)(2)(iv) of this section and include the type of recipient, based on recipient codes applicable for chapter 3 purposes used for filing Forms 1042–S, if the foreign person is a recipient as defined in § 1.1461–1(c)(1)(ii).

(*ii*) The withholding statement must allocate each payment, by income type, to every payee required to be reported on the withholding statement for whom documentation has been provided (including U.S. exempt recipients except as provided in paragraph (e)(3)(iv)(A) of this section). Any payment that cannot be reliably associated with valid documentation from a payee shall be treated as made to an unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d). For this purpose, a type of income is determined by the types of income required to be reported on Forms 1042–S or 1099, as appropriate. Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is only required to be allocated to the extent it is required to be reported on Form 1099 or Form 1042–S. See § 1.6049–8 (regarding reporting of bank deposit interest to certain foreign persons). If a payee receives income through another nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution described in paragraph (e)(2)(iv) of this section (other than a U.S. branch or territory financial

institution treated as a U.S. person), the withholding statement must also state, with respect to the payee, the name, address, and TIN, if known, of the other nonqualified intermediary or U.S. branch from which the payee directly receives the payment or the flow-through entity in which the payee has a direct ownership interest. If another nonqualified intermediary, flow-through entity, or U.S. branch fails to allocate a payment, the name of the nonqualified intermediary, flow-through entity, or U.S. branch that failed to allocate the payment shall be provided with respect to such payment.

(*iii*) If a payee is identified as a foreign person, the nonqualified intermediary must specify the rate of withholding to which the payee is subject, the payee's country of residence and, if a reduced rate of withholding is claimed, the basis for that reduced rate (*e.g.,* treaty benefit, portfolio interest, exempt under section 501(c)(3), 892, or 895). The allocation statement must also include the TINs of those foreign persons for whom such a number is required under paragraph (e)(4)(vii) of this section or § 1.1441–6(b)(1) (regarding claims for treaty benefits for which a TIN is provided unless a foreign tax identifying number described in § 1.1441–6(b)(1) is provided). In the case of a claim of treaty benefits, the nonqualified intermediary's withholding statement must also state whether the limitation on benefits and section 894 statements required by § 1.1441–6(c)(5) have been provided, if required, in the beneficial owner's Form W–8 or associated with such owner's documentary evidence.

(*iv*) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 3 and chapter 61 of the Code, and section 3406.

(*2*) *Nonqualified intermediary withholding statement for withholdable payments.* This paragraph (e)(3)(iv)(C)(*2*) modifies the requirements of a withholding statement described in paragraph (e)(3)(iv)(C)(*1*) of this section that is provided by a nonqualified intermediary with respect to a reportable amount that is a withholdable payment. For such a payment, the requirements applicable to a withholding statement described in paragraph (e)(3)(iv)(A) through (e)(3)(iv)(C)(*1*) of this section shall apply, except that—

(*i*) The withholding statement must include the chapter 4 status (using the applicable status code used for filing Form 1042–S) and GIIN (when required for chapter 4 purposes under § 1.1471–3(d)) of each other intermediary or flow-through entity that is a foreign person and that receives the payment, excluding an intermediary or flow-through entity that is an account holder of or interest holder in a withholding foreign partnership, withholding foreign trust, or intermediary acting as a qualified intermediary for the payment;

(*ii*) If the nonqualified intermediary that is a participating FFI or registered deemed-compliant FFI provides a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*2*) (describing an FFI withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to nonparticipating FFIs and recalcitrant account holders (to the extent permitted on an FFI withholding statement described in that paragraph) in lieu of providing specific payee information with respect to such persons on the statement (including persons subject to chapter 4 withholding) as described in paragraph (e)(3)(iv)(C)(*1*) of this section;

(*iii*) If the nonqualified intermediary provides a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*3*) (describing a chapter 4 withholding statement), the withholding statement may include chapter 4 withholding rate pools with respect to the portions of the payment allocated to nonparticipating FFIs;

(*iv*) For a payment allocated to a payee that is a foreign person (other than a person included in a chapter 4 withholding rate pool described in paragraphs (e)(3)(iv)(C)(*2*)(*ii*) and (*iii*) of this section) that is reported on a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*2*) or (*3*), the withholding statement must include the chapter 4 status of the payee (unless an exception applies for purposes of providing such status under chapter 4) and, for a payee other than an individual, the recipient code for chapter 4 purposes used for filing Form 1042–S; and

(*v*) To the extent that a withholdable payment is not reportable on a Form 1042–S, Form 1099 under the rules of chapter 61, or Form 8966 ''FATCA Report,'' no allocation of the payment is required on the withholding statement.

(*3*) [Reserved]. For further guidance, see § 1.1441–1T(e)(3)(iv)(C)(*3*).

(*4*)

Example. This example illustrates the principles of paragraph (e)(3)(iv)(C) of this section. WA makes a withholdable payment of U.S. source dividends to NQI, a nonqualified intermediary. NQI provides WA with a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section that includes NQI's certification of its status for chapter 4 purposes as a participating FFI. NQI provides a withholding statement on which NQI allocates 20% of the payment to a chapter 4 withholding rate pool of recalcitrant account holders of NQI for purposes of chapter 4 and allocates 80% of the payment equally to A and B, individuals that are account holders of NQI. NQI also provides WA with valid beneficial owner withholding certificates from A and B establishing their status as foreign persons entitled to a 15% rate of withholding under an applicable income tax treaty. Because NQI has certified its status as a participating FFI, withholding under chapter 4 is not required with respect to NQI. See § 1.1471–2(a)(4). Based on the documentation NQI provided to WA with respect to A and B, WA can reliably associate the payment with valid documentation on the portion of the payment allocated to them and, because the payment is a withholdable payment, may rely on the allocation of the payment for NQI's recalcitrant account holders in a chapter 4 withholding rate pool in lieu of payee information with respect to such account holders. See paragraph (e)(3)(iv)(C)(*2*) of this section for the special rules for a withholding statement provided by a nonqualified intermediary for a withholdable payment. Also see § 1.1471–2(a) for WA's withholding requirements under chapter 4 with respect to the portion of the payment allocated to NQI's recalcitrant account holders and § 1.1441–3(a)(2) for coordinating withholding under chapter 3 for payments to which withholding is applied under chapter 4.

(D) *Alternative procedures*—(*1*) *In general.* Under the alternative procedures of this paragraph (e)(3)(iv)(D), a nonqualified intermediary may provide information allocating a payment of a reportable amount to each payee (including U.S. exempt recipients) otherwise required under paragraph (e)(3)(iv)(B)(*2*) of this section after a payment is made. To use the alternative procedure of this paragraph (e)(3)(iv)(D), the nonqualified intermediary must inform the withholding agent on a statement associated with its nonqualified intermediary withholding certificate that it is using the procedure under this paragraph (e)(3)(iv)(D) and the withholding agent must agree to the procedure. If the requirements of the alternative procedure are met, a withholding agent, including the nonqualified intermediary using the procedures, can treat the payment as reliably associated with documentation and, therefore, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d) do not apply even though information allocating the payment to each payee has not been received prior to the payment. See paragraph (e)(3)(iv)(D)(*7*) of this section, however, for a nonqualified intermediary's

liability for tax and penalties if the requirements of this paragraph (e)(3)(iv)(D) are not met. These alternative procedures shall not be used for payments that are allocable to U.S. non-exempt recipients except as provided in paragraph (e)(3)(iv)(D)(*2*)(*ii*) of this section. Therefore, a nonqualified intermediary is required to provide a withholding agent with information allocating payments of reportable amounts to U.S. non-exempt recipients prior to the payment being made by the withholding agent.

(*2*) *Withholding rate pools*—(*i*) *In general.* In place of the information required in paragraph (e)(3)(iv)(C)(*2*) of this section allocating payments to each payee, the nonqualified intermediary must provide a withholding agent with withholding rate pool information prior to the payment of a reportable amount. The withholding statement must contain all other information required by paragraph (e)(3)(iv)(C) of this section. Further, each payee listed in the withholding statement must be assigned to an identified withholding rate pool. To the extent a nonqualified intermediary is required to provide, or does provide, documentation, the alternative procedures do not relieve the nonqualified intermediary from the requirement to provide documentation prior to the payment being made. Therefore, withholding certificates or other appropriate documentation and all information required by paragraph (e)(3)(iv)(C) of this section (other than allocation information) must be provided to a withholding agent before any new payee receives a reportable amount. In addition, the withholding statement must be updated by assigning a new payee to a withholding rate pool prior to the payment of a reportable amount. A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income used to file Form 1042–S, that is subject to a single rate of withholding. A withholding rate pool may be established by any reasonable method to which the nonqualified intermediary and a withholding agent agree (*e.g.,* by establishing a separate account for a single withholding rate pool, or by dividing a payment made to a single account into portions allocable to each withholding rate pool). The nonqualified intermediary shall determine withholding rate pools based on valid documentation or, to the extent a payment cannot be reliably associated with valid documentation, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d).

(*ii*) *Withholding rate pools for chapter 4 purposes.* This paragraph (e)(3)(iv)(D)(*2*)(*ii*) modifies the provisions of paragraph (e)(3)(iv)(D)(*2*)(*i*) of this section with respect to the withholding rate pools permitted for the alternative procedures described in paragraph (e)(3)(iv)(D)(*1*) of this section in the case of a payment that is allocable on a withholding statement to a chapter 4 withholding rate pool as described in this paragraph. In the case of a withholdable payment, a nonqualified intermediary may include reportable amounts allocable to a chapter 4 withholding rate pool (other than a chapter 4 withholding rate pool of U.S. payees) in a 30-percent rate pool together with a withholding rate pool for amounts subject to chapter 3 withholding at the 30-percent rate. For a payment of a reportable amount that is allocable to a chapter 4 withholding rate pool of U.S. payees on a withholding statement, a nonqualified intermediary may include such amount in a single withholding rate pool with the amount of the payment that is exempt from withholding under chapter 3 instead of providing documentation regarding U.S. non-exempt recipients included in the pool or separately allocating the amount to the chapter 4 withholding rate pool. To the extent that a nonqualified intermediary allocates an amount to any chapter 4 withholding rate pool, the nonqualified intermediary is required to notify the withholding agent of the allocation before receiving the payment and is not required to provide documentation with respect to the payees included in such pool. The nonqualified intermediary shall determine the chapter 4 withholding rate pools permitted to be used under this paragraph (e)(3)(iv)(D)(*2*)(*ii*) in accordance with the nonqualified intermediary's applicable chapter 4 status and under § 1.1471–3(c)(3)(iii)(B)(*2*) (for an FFI withholding statement) or (c)(3)(iii)(B)(*3*) (for a chapter 4 withholding statement) or under § 1.6049–4(c)(4) for a chapter 4 withholding rate pool of U.S. payees (or similar applicable coordination rule in chapter 61 for payments other than interest). Additionally, the nonqualified intermediary shall identify those payees to which withholding under chapter 4 applies that are not included in a chapter 4 reporting pool (including payees that could be included in a chapter 4 withholding rate pool for whom the nonqualified intermediary chooses to provide payee specific information).

(*3*) *Allocation information.* The nonqualified intermediary must provide the withholding agent with sufficient information to allocate the income in each withholding rate pool to each payee (including U.S. exempt recipients or any chapter 4 withholding rate pool identified by the withholding agent under paragraph (e)(3)(iv)(D)(*2*)(*ii*) of this section) within the pool no later than January 31 of the year following the year of payment. Any payments that are not allocated to payees for whom documentation has been provided or a chapter 4 withholding rate pool referred to in the previous sentence shall be allocated to an undocumented payee in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and 1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes). Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is not required to be allocated to a U.S. exempt recipient or a foreign payee, except as required under § 1.6049–8 (regarding reporting of deposit interest paid to certain foreign persons).

(*4*) *Failure to provide allocation information.* Except as provided in paragraph (e)(3)(iv)(D)(*5*) of this section, if a nonqualified intermediary fails to provide allocation information, if required, by January 31 for any withholding rate pool to the extent required in paragraph (e)(3)(iv)(D)(*3*) of this section, a withholding agent shall not apply the alternative procedures of this paragraph (e)(3)(iv)(D) to any payments of reportable amounts paid after January 31 in the taxable year following the calendar year for which allocation information was not given and any subsequent taxable year. Further, the alternative procedures shall be unavailable for any other withholding rate pool (other than a chapter 4 withholding rate pool as otherwise permitted) even though allocation information was given for that other pool. Therefore, the withholding agent must withhold on a payment of a reportable amount in accordance with the presumption rules of paragraph (b)(3) of this section, and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and 1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes), unless the nonqualified intermediary provides all of the information, including information sufficient to allocate the payment to each specific payee or chapter 4 withholding rate pool (as permitted), required by paragraph

(e)(3)(iv)(A) through (C) of this section prior to the payment. A nonqualified intermediary must allocate at least 90 percent of the income required to be allocated for each withholding rate pool as required under this paragraph (e)(3)(iv)(D)(*4*) or the nonqualified intermediary will be treated as having failed to provide allocation information for purposes of this paragraph (e)(3)(iv)(D). For purposes of the allocation, a nonqualified intermediary is required to identify by January 31 the portion of the payment that is allocated to each chapter 4 withholding rate pool (rather than the payees included in each such pool). See paragraph (e)(3)(iv)(D)(*7*) of this section for liability for tax and penalties if a nonqualified intermediary fails to provide allocation information in whole or in part.

(*5*) *Cure provision.* A nonqualified intermediary may cure any failure to provide allocation information by providing the required allocation information to the withholding agent no later than February 14 following the calendar year of payment. If the withholding agent receives the allocation information by that date, it may apply the adjustment procedures of § 1.1461–2 (or of § 1.1474–2 for an amount withheld under chapter 4) to any excess withholding for payments made on or after February 1 and on or before February 14. Any nonqualified intermediary that fails to cure by February 14 may request the ability to use the alternative procedures of this paragraph (e)(3)(iv)(D) by submitting a request, in writing, to the IRS. The request must state the reason that the nonqualified intermediary did not comply with the alternative procedures of this paragraph (e)(3)(iv)(D) and steps that the nonqualified intermediary has taken, or will take, to ensure that no failures occur in the future. If the IRS determines that the alternative procedures of this paragraph (e)(3)(iv)(D) may apply, a determination to that effect will be issued by the IRS to the nonqualified intermediary.

(*6*) *Form 1042–S reporting in case of allocation failure.* If a nonqualified intermediary fails to provide allocation information by February 14 following the year of payment for a withholding rate pool, the withholding agent must file Forms 1042–S for payments made to each payee in that pool (other than U.S. exempt recipients) in the prior calendar year by pro rating the payment to each payee (including U.S. exempt recipients) listed in the withholding statement for that withholding rate pool, treating as a payee for this purpose each chapter 4 withholding rate pool identified by the nonqualified intermediary under paragraph (e)(3)(iv)(D)(*2*)(*ii*) of this section. If the nonqualified intermediary fails to allocate 10 percent or less of an amount required to be allocated for a withholding rate pool, a withholding agent shall report the unallocated amount as paid to a single unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and § 1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes). The portion of the payment that can be allocated to specific recipients, as defined in § 1.1461–1(c)(1)(ii), shall be reported to each recipient in accordance with the rules of § 1.1461–1(c) and § 1.1474–1(d)(2) (for a withholdable payment).

* * * * *

(E) *Notice procedures.* The IRS may notify a withholding agent that the alternative procedures of paragraph (e)(3)(iv)(D) of this section are not applicable to a specified nonqualified intermediary, a U.S. branch described in paragraph (b)(2)(iv) of this section, or a flow-through entity. If a withholding agent receives such a notice, it must commence withholding under this section or chapter 4 (if applicable) in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes) unless the nonqualified intermediary, U.S. branch, or flow-through entity complies with the procedures in paragraphs (e)(3)(iv)(A) through (C) of this section. In addition, the IRS may notify a withholding agent, in appropriate circumstances, that it must apply the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6), 1.6049–5(d), and § 1.1471–3(f)(5) (for a withholdable payment for chapter 4 purposes) to payments made to a nonqualified intermediary, a U.S. branch, or a flow-through entity even if the nonqualified intermediary, U.S. branch, or flow-through entity provides allocation information prior to the payment. A withholding agent that receives a notice under this paragraph (e)(3)(iv)(E) must commence withholding in accordance with the presumption rules within 30 days of the date of the notice. The IRS may withdraw its prohibition against using the alternative procedures of paragraph (e)(3)(iv)(D) of this section, or its requirement to follow the presumption rules, if the nonqualified intermediary, U.S. branch, or flow-through entity can demonstrate to the satisfaction of the IRS that it is capable of complying with the rules under chapter 3 of the Code and any other conditions required by the IRS.

(v) *Withholding certificate from certain U.S. branches (including territory financial institutions).* A U.S. branch certificate is a withholding certificate provided by a U.S. branch (including a territory financial institution) described in paragraph (b)(2)(iv) of this section that is not the beneficial owner of the income. The withholding certificate is provided with respect to reportable amounts and must state that such amounts are not effectively connected with the conduct of a trade or business in the United States. The withholding certificate must either transmit the appropriate documentation for the persons for whom the branch receives the payment (*i.e.,* as an intermediary) or be provided as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payment associated with the certificate. A U.S. branch withholding certificate is valid only if it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the branch, its validity has not expired, and it contains the information, statements, and certifications described in this paragraph (e)(3)(v). If the certificate is furnished to transmit withholding certificates and other documentation, it must contain the information, certifications, and statements described in paragraphs (e)(3)(v)(A) through (C) of this section and in paragraphs (e)(3)(iii) and (iv) (alternative procedures) of this section, applying the term U.S. branch instead of the term nonqualified intermediary. If the certificate is furnished pursuant to an agreement to treat the U.S. branch or territory financial institution as a U.S. person (which agreement must be for purposes of chapter 4 in addition to this section in the case of a payment that is a withholdable payment), the information and certifications required on the withholding certificate are limited to the following—

(A) The name of the territory financial institution or person of which the U.S. branch is a part, the address of the territory financial institution or U.S. branch;

(B) A certification that the payments associated with the certificate are not effectively connected with the conduct of its trade or business in the United States;

(C) The EIN of the U.S. branch or territory financial institution;

(D) When required for chapter 4 purposes, the chapter 4 status and GIIN (if applicable) of the entity of which the U.S. branch is a part; and

(E) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(v).

* * * * *

(4) *Applicable rules.* The provisions in this paragraph (e)(4) describe procedures applicable to withholding certificates on Form W–8 or Form 8233 (or a substitute form) or documentary evidence furnished to establish foreign status. These provisions do not apply to Forms W–9 (or their substitutes). For corresponding provisions regarding Form W–9 (or a substitute form), see section 3406 and the regulations under that section.

(i) *Who may sign the certificate*—(A) *In general.* A withholding certificate (including an acceptable substitute) may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate as provided in section 6061 and the regulations under that section (relating to who may sign generally for an individual, estate, or trust, which includes certain agents who may sign returns and other documents), section 6062 and the regulations under that section (relating to who may sign corporate returns), and section 6063 and the regulations under that section (relating to who may sign partnership returns). A person authorized to sign a withholding certificate includes an officer or director of a corporation, a partner of a partnership, a trustee of a trust, an executor of an estate, any foreign equivalent of the former titles, and any other person that has been provided written authorization by the individual or entity named on the certificate to sign documentation on such person's behalf.

(B) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(i)(B).

(ii) *Period of validity*—(A) *General rule*—(*1*) *Withholding certificates and documentary evidence.* Except as provided otherwise in paragraphs (e)(4)(ii)(B) and (C) of this section and this paragraph (e)(4)(ii)(A), a withholding certificate described in paragraph (e)(2)(i) of this section, or a certificate described in § 1.871–14(c)(2)(v) (furnished to qualify interest as portfolio interest for purposes of sections 871(h) and 881(c)), will remain valid until the earlier of the last day of the third calendar year following the year in which the withholding certificate is signed or the day that a change in circumstances occurs that makes any information on the certificate incorrect. For example, a withholding certificate signed on September 30, 2015, remains valid through December 31, 2018, unless circumstances change that make the information on the form no longer correct. Documentary evidence described in § 1.6049–5(c)(1) provided to establish a payee's foreign status shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent except as provided in paragraph (e)(4)(ii)(B) of this section; however, if such documentary evidence contains an expiration date, it may be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period. Additionally, a withholding certificate or documentary evidence with a period of validity that is valid on December 31, 2013, will not be treated as invalid based solely on the period described in this paragraph (e)(4)(ii) before January 1, 2015. Notwithstanding the validity periods prescribed by this paragraph (e)(4)(ii)(A) and paragraphs (e)(4)(ii)(B) and (C) of this section, a withholding certificate and documentary evidence will cease to be valid if a change in circumstances makes the information on the documentation incorrect.

(*2*) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(ii)(A)(*2*).

(B) *Indefinite validity period.* Notwithstanding paragraph (e)(4)(ii)(A) of this section, the certificates (or parts of certificates) and documentary evidence described in paragraphs (e)(4)(ii)(B)(*1*) through (*11*) of this section shall remain valid until a change in circumstances makes the information on the documentation incorrect under paragraph (e)(4)(ii)(D)(*3*). See, however, § 1.1471–3(c)(6)(ii) for when a withholding certificate or documentary evidence remains valid (or is subject to renewal) when also provided with respect to a withholdable payment made to an entity (including an intermediary) for purposes of whether a withholding agent may continue to rely on the entity's claim of chapter 4 status. Additionally, the provisions of paragraphs (e)(4)(ii)(B)(*1*), (*2*), and (*11*) of this section do not apply to documentary evidence or a withholding certificate furnished prior to July 1, 2014. (For documentary evidence or a withholding certificate furnished 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.)

(*1*) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) and documentary evidence supporting a claim of foreign status when both are provided together by an individual claiming foreign status, if the withholding agent does not have a current U.S. residence address or U.S. mailing address for the payee, does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee, and, for a payment described in § 1.6049–5(c)(1), the withholding agent has not been provided standing instructions to make a payment to an account in the United States for the obligation. For purposes of the preceding sentence, a beneficial owner withholding certificate and documentary evidence supporting the individual's claim of foreign status will be treated as provided together if they are provided within 30 days of each other, regardless of which the withholding agent receives first.

(*2*) A beneficial owner withholding certificate (other than the portion of the certificate making a claim for treaty benefits) and documentary evidence provided by an entity supporting the entity's claim of foreign status, if both are received by the withholding agent before the validity period of either the withholding certificate or the documentary evidence would otherwise expire under paragraph (e)(4)(ii)(A) of this section. See, however, § 1.1471–3(c)(6)(ii) for rules regarding indefinite validity for chapter 4 purposes.

(*3*) A beneficial owner withholding certificate provided by an entity claiming status as a tax-exempt entity under section 501(c) that is not a foreign private foundation under section 509, provided that the withholding agent reports at least one payment annually to the entity under § 1.1461–1(c).

(*4*) A certificate described in paragraph (e)(3)(ii) of this section (a qualified intermediary withholding certificate) but not including the withholding certificates, documentary evidence, statements, or other information associated with the certificate.

(*5*) A certificate described in paragraph (e)(3)(iii) of this section (a nonqualified intermediary certificate), but not including the withholding certificates, documentary evidence, statements, or other information associated with the certificate.

(*6*) A certificate described in paragraph (e)(3)(v) of this section (a U.S. branch (including a territory financial institution) withholding certificate that is not provided by the beneficial owner),

but not including the withholding certificates, documentary evidence, statements, or other information associated with the certificate.

* * * * *

(*8*) A withholding certificate provided by a withholding foreign trust described in § 1.1441–5(e)(5)(v).

(*9*) A certificate described in § 1.1441–5(c)(2)(iv) (dealing with a certificate from a person representing to be a withholding foreign partnership).

(*10*) A certificate described in § 1.1441–5(c)(3)(iii) (a withholding certificate from a nonwithholding foreign partnership) or in § 1.1441–5(e)(5)(iii) (a withholding certificate of a foreign simple or foreign grantor trust) but not including the withholding certificates, documentary evidence, statements, or other information required to be associated with the certificate; and

(*11*) Documentary evidence that is not generally renewed or amended (such as a certificate of incorporation).

(C) *Withholding certificate for effectively connected income.* Notwithstanding paragraph (e)(4)(ii)(B) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of withholding for income that is effectively connected with the conduct of a trade or business within the United States shall be limited to the three-year period described in paragraph (e)(4)(ii)(A) of this section.

(D) *Change in circumstances*—(*1*) *Defined.* A certificate or documentation becomes invalid from the date of a change in circumstances affecting the correctness of the certificate or documentation to the extent provided in this paragraph (e)(4)(ii)(D). For purposes of this section, a person is considered to have a change in circumstances only if such change affects the person's claim of chapter 3 status. Thus, for example, a change of address is not a change in circumstances with respect to a claim of only foreign status under this paragraph (e)(4)(ii)(D) if the change is to another address outside the United States, but is a change in circumstances if the change is to an address in the United States.

(*2*) *Obligation to notify a withholding agent of a change in circumstances.* If a change in circumstances makes any information on a certificate or other documentary evidence incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate or new documentary evidence. If an intermediary (including a U.S. branch or territory financial institution described in paragraph (b)(2)(iv)(A) of this section) or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects a payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change of circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation the validity of which has expired due to the change in circumstances to continue to treat the person who provided the certificate or documentary evidence under its claimed chapter 3 status.

(*3*) *Withholding agent's obligation with respect to a change in circumstances.* A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed, as permitted under paragraph (e)(4)(viii) of this section. A withholding agent is required to notify any person providing documentary evidence (in lieu of a withholding certificate) of the person's obligation to notify the withholding agent of a change in circumstances. However, a withholding agent may choose to apply the provisions of paragraph (b)(3)(iv) of this section regarding the 90-day grace period as of that date while awaiting a new certificate or documentation or while seeking information regarding changes, or suspected changes, in the person's circumstances. A withholding agent may also require a new certificate at any time prior to a payment, even though the withholding agent has no actual knowledge or reason to know that any information stated on the certificate has changed.

(iii) *Retention of documentation.* A withholding agent must retain each withholding certificate and other documentation for purposes of this section for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and § 1.1461–1. A withholding agent may retain a withholding certificate or documentary evidence that is an original, certified copy, or a scanned document (as described in paragraph (e)(4)(iv)(D) of this section). A withholding agent may also retain a withholding certificate by other means (such as microfiche) that allows a reproduction of the document provided that the withholding agent has recorded its receipt of a form described in the preceding sentence and is able to produce a hard copy of the form. See § 1.6049–5(c)(1) for the requirements for maintaining documentary evidence that also apply for purposes of determining a payee's U.S. or foreign status for purposes of chapter 3.

(iv) *Electronic transmission of information*—(A) *In general.* A withholding agent may establish a system for a beneficial owner or payee to electronically furnish a Form W–8, an acceptable substitute Form W–8, or such other form as the IRS may prescribe. The system must meet the requirements described in paragraph (e)(4)(iv)(B) of this section. See paragraph (e)(4)(iv)(D) of this section for other cases in which a Form W–8 (or other documentation) may be furnished electronically.

* * * * *

(C) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(iv)(C).

(D) *Forms and documentary evidence received by facsimile or email.* A withholding agent may rely upon an otherwise valid Form W–8 (or documentary evidence) received by facsimile or a form or document scanned and received electronically, such as, for example, an image embedded in an email or as a Portable Document Format (.pdf) attached to an email. A withholding agent may not rely on a form or document received by such means, however, if the withholding agent knows that the form or document was transmitted to the withholding agent by a person not authorized to do so by the person required to execute the form. A withholding agent may establish other procedures to authenticate and verify a form or document sent by such means and may reject any form or document that fails to satisfy the requirements of such procedures. A taxpayer may apply this paragraph (e)(4)(iv)(D) to all of its open tax years, including tax years that are currently under examination by the IRS.

(E) [Reserved]. For further guidance, see § 1.1441–1T(e)(4)(iv)(E).

(v) *Additional procedures for certificates provided electronically.* The IRS may prescribe procedures in a revenue procedure (see § 601.601(d)(2) of this chapter) or may issue other appropriate guidance (including a written directive for revenue agents) to further prescribe the conditions by which the IRS will determine that a system developed by a withholding

agent to permit beneficial owners and payees to provide Forms W–8 electronically satisfies the requirements of paragraph (e)(4)(iv)(B) of this section.

(vi) *Acceptable substitute form.* A withholding agent may substitute its own form instead of an official Form W–8 or 8233 (or such other official form as the IRS may prescribe). Such a substitute for an official form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one stated on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished (including those required for purposes of chapter 4). For example, a withholding agent that pays no income for which treaty benefits are claimed may develop a substitute form that is identical to the official form, except that it does not include information regarding claims of benefits under an income tax treaty. Similarly, a withholding agent that is not required to determine the chapter 4 status of a payee providing a form may develop a substitute form that does not contain chapter 4 statuses. A withholding agent who uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may use a substitute form that is written in a language other than English and may accept a form that is filled out in a language other than English, but the withholding agent must make available an English translation of the form and its contents to the IRS upon request. A withholding agent may refuse to accept a certificate from a payee or beneficial owner (including the official Form W–8 or 8233) if the certificate provided is not an acceptable substitute form provided by the withholding agent, but only if the withholding agent furnishes the payee or beneficial owner with an acceptable substitute form within 5 business days of receipt of an unacceptable form from the payee or beneficial owner. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the payee or beneficial owner and that the payee or beneficial owner must submit the acceptable form provided by the withholding agent in order for the payee or beneficial owner to be treated as having furnished the required withholding certificate.

(vii) *Requirement of taxpayer identifying number.* A TIN must be stated on a withholding certificate when required by this paragraph (e)(4)(vii) for the withholding certificate to be valid for purposes of this section. A TIN is required to be stated on—

(A) A withholding certificate on which a beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than for amounts described in § 1.1441–6(c)(2) or amounts for which a foreign tax identifying number has been provided, as described in § 1.1441–6(c)(2));

* * * * *

(F) A withholding certificate from a person representing to be a withholding foreign partnership or a withholding foreign trust;

* * * * *

(H) A withholding certificate from a person representing to be a U.S. branch or territory financial institution described in paragraph (b)(2)(iv) of this section; and

(I) A withholding certificate provided by an entity acting as a qualified securities lender, as defined for purposes of chapter 3, with respect to a substitute dividend paid in a securities lending or similar transaction.

(viii) *Reliance rules.* A withholding agent may rely on the information and certifications stated on withholding certificates or other documentation without having to inquire into the veracity of this information or certification, unless it has actual knowledge or reason to know that the information or certification is incorrect. In the case of amounts described in § 1.1441–6(c)(2), a withholding agent described in § 1.1441–7(b)(3) has reason to know that the information or certifications on a certificate are incorrect only to the extent provided in § 1.1441–7(b)(4) through (6). See § 1.1441–6(b)(1) for reliance on representations regarding eligibility for a reduced rate under an income tax treaty. Paragraphs (e)(4)(viii)(A) and (B) of this section provide examples of such reliance.

* * * * *

(B) *Status of payee as an intermediary or as a person acting for its own account.* A withholding agent may rely on the type of certificate furnished as indicative of the payee's status as an intermediary or as an owner, unless the withholding agent has actual knowledge or reason to know otherwise. For example, a withholding agent that receives a beneficial owner withholding certificate from a foreign financial institution may treat the institution as the beneficial owner, unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status (*e.g.,* sub-account numbers that do not correspond to accounts maintained by the withholding agent for such person or names of one or more persons other than the person submitting the withholding certificate). If the financial institution also acts as an intermediary, the withholding agent may request that the institution furnish two certificates, *i.e.,* a beneficial owner certificate described in paragraph (e)(2)(i) of this section for the amounts that it receives as a beneficial owner, and an intermediary withholding certificate described in paragraph (e)(3)(i) of this section for the amounts that it receives as an intermediary. In the absence of reliable representation or information regarding the status of the payee as an owner or as an intermediary, see paragraph (b)(3)(v)(A) for applicable presumptions.

(C) *Reliance on a prior version of a withholding certificate.* Upon the issuance by the IRS of an updated version of a withholding certificate, a withholding agent may continue to accept the prior version of the withholding certificate until the later of six full months after the revision date shown on the updated withholding certificate or the end of the calendar year the updated withholding certificate is issued, unless the IRS has issued guidance that indicates that the period for accepting a prior version is shortened or extended (including in the instructions to the form), such as when there is a new payee status required to be established using the form. A withholding agent may continue to rely upon a previously signed prior version of the withholding certificate until its period of validity expires.

(ix) *Certificates to be furnished to withholding agent for each obligation unless exception applies.* Unless otherwise provided in paragraphs (e)(4)(ix)(A) through (D) of this section, a withholding agent that is a financial institution with which a customer may open an account shall obtain a withholding certificate or documentary evidence on an obligation-by-obligation basis and may not rely upon such documentation collected by another person or another branch of the withholding agent.

(A) *Exception for certain branch or account systems or system maintained*

by agent. A withholding agent may rely on a withholding certificate or documentary evidence furnished by a customer as part of a single branch system, universal account system, or shared account system described in § 1.1471–3(c)(8) (substituting the term chapter 3 status for chapter 4 status each place it appears in that paragraph). Furthermore, a withholding agent may rely on a shared documentation system maintained by an agent as described in § 1.1471–3(c)(9)(i) (also substituting the term chapter 3 status for chapter 4 status each place it appears in that paragraph).

(B) *Reliance on certification provided by introducing brokers*—(*1*) *In general.* A withholding agent may rely on the certification of a broker indicating the broker's determination of a payee's chapter 3 status and that the broker holds a valid beneficial owner withholding certificate described in paragraph (e)(2)(i) of this section or other appropriate documentation for that beneficial owner with respect to any readily tradable instrument, as defined in § 31.3406(h)–1(d) of this chapter, if the broker is a United States person (including a U.S. branch treated as a U.S. person under paragraph (b)(2)(iv) of this section) that is acting as the agent of a beneficial owner. A withholding agent may also rely on a certification described in the preceding sentence that is provided by a qualified intermediary that makes payments to beneficial owners that it receives from the withholding agent. The certification must be in writing or in electronic form and contain all of the information required of a nonqualified intermediary under paragraphs (e)(3)(iv)(B) and (C) of this section. If a broker chooses to use this paragraph (e)(4)(ix)(B), that broker will be solely responsible for applying the rules of § 1.1441–7(b) to the withholding certificates or other appropriate documentation and shall be liable for any underwithholding as a result of the broker's failure to apply such rules. See § 1.1471–3(c)(9)(iii) for a similar allowance that applies to a broker's determination of a payee's chapter 4 status for purposes of chapter 4. For purposes of this paragraph (e)(4)(ix)(B), the term *broker* means a person treated as a broker under § 1.6045–1(a).

(*2*) *Example.* The following example illustrates the rules of this paragraph (e)(4)(x)(B) with respect to a U.S. broker:

Example. SCO is a U.S. securities clearing organization that provides clearing services for correspondent broker, CB, a U.S. corporation. Pursuant to a fully disclosed clearing agreement, CB fully discloses the identity of each of its customers to SCO. Part of SCO's clearing duties include the crediting of income and gross proceeds of readily tradable instruments (as defined in § 31.3406(h)-1(d)) to each customer's account. For each disclosed customer that is a foreign beneficial owner, CB provides SCO with information required under paragraphs (e)(3)(iv)(B) and (C) of this section that is necessary to apply the correct rate of withholding and to file Forms 1042–S. SCO may use the representations and beneficial owner information provided by CB to determine the proper amount of withholding and to file Forms 1042–S. CB is responsible for determining the validity of the withholding certificates or other appropriate documentation under § 1.1441–1(b).

(C) *Reliance on documentation and certifications provided between principals and agents*—(*1*) *Withholding agent as agent.* A withholding agent that acts on behalf of a principal may rely upon documentation (or copies of documentation) obtained from the principal, and, with respect to a principal that is a U.S. withholding agent, a qualified intermediary (when acting as such for determining a payee's status), or a withholding foreign partnership or withholding foreign trust with respect to a partner, owner, or beneficiary in the partnership or trust, the withholding agent may rely upon certification provided by the principal for purposes of determining a payee's chapter 3 status. Thus an agent (such as a paying agent or transfer agent) may not rely upon a certification provided by a principal that is a participating FFI but is not also a qualified intermediary, withholding foreign partnership, or withholding foreign trust for purposes of this section, even though it may rely on the certification when provided solely for purposes of chapter 4 under § 1.1471–3(c)(9)(iv).

(*2*) *Withholding agent as principal.* A withholding agent may also rely on documentation collected by an agent of the withholding agent in order to fulfill its chapter 3 obligations because such agent's actions are imputed to the principal (the withholding agent). For example, a withholding agent may contract an agent to collect Forms W–8 from account holders on its behalf, but the withholding agent remains liable for any tax liability resulting from a failure of the agent to comply with the requirements of chapter 3.

(D) *Reliance upon documentation for accounts acquired in merger or bulk acquisition for value.* A withholding agent that acquires an account from a predecessor or transferor in a merger or bulk acquisition of accounts for value is permitted to rely upon valid documentation (or copies of valid documentation) collected by the predecessor or transferor for determining the chapter 3 status of an account holder of such an account. In addition, a withholding agent that acquires an account in a merger or bulk acquisition of accounts for value, other than a related party transaction, from a U.S. withholding agent (or a qualified intermediary when the withholding agent is also a qualified intermediary) may also rely upon the predecessor's or transferor's determination of the account holder's chapter 3 status for a transition period of the lesser of six months from the date of the merger or until the acquirer knows that the claim of entity classification and status is inaccurate or a change in circumstances occurs with respect to the account. At the end of the transition period, the acquirer will be permitted to rely upon the predecessor's determination as to the chapter 3 status of the account holder only if the documentation that the acquirer has for the account holder, including documentation obtained from the predecessor or transferor, supports the status claimed. An acquirer that discovers at the end of the transition period that the chapter 3 status assigned by the predecessor or transferor to the account holder was incorrect and has not withheld as it would have been required to but for its reliance upon the predecessor's determination, will be required to withhold on future payments, if any, made to the account holder the amount of tax that should have been withheld during the transition period but for the erroneous classification as to the account holder's status. For purposes of this paragraph (e)(4)(ix)(D), a related party transaction is a merger or sale of accounts in which the acquirer is in the same expanded affiliated group, within the meaning of § 1.1471–5(i)(2), as the predecessor or transferor either prior to or after the merger or acquisition or the predecessor or transferor (or shareholders of the predecessor or transferor) obtain a controlling interest in the acquirer or in a newly formed entity created for purposes of the merger or acquisition. See § 1.1471–3(c)(v) for a similar reliance rule that applies for purposes of chapter 4.

(5) * * *

(ii) *Definition of qualified intermediary.* With respect to a payment to a foreign person, the term qualified intermediary means a person that is a party to a withholding agreement with the IRS where such person is—

(A) A foreign financial institution that is a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI), an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due

diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1), excluding a U.S. branch of any of the foregoing entities, or any other category of FFI identified in a qualified intermediary withholding agreement as eligible to act as a qualified intermediary;

(B) A foreign branch or office of a U.S. financial institution or a foreign branch or office of a U.S. clearing organization that is either a reporting Model 1 FFI or agrees to the reporting requirements applicable to a participating FFI with respect to its U.S. accounts;

(C) [Reserved].

(D) Any other person acceptable to the IRS.

(iii) *Withholding agreement*—(A) *In general.* The IRS may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a qualified intermediary shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3, 4, and 61 of the Code, section 3406, the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement.

(B) *Terms of the withholding agreement.* The withholding agreement shall specify the obligations of the qualified intermediary under chapters 3 and 4 including, for a qualified intermediary that is an FFI, the documentation, withholding, and reporting obligations required of a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI as defined in § 1.1471–1(b)(114)) with respect to each branch of the qualified intermediary other than a U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section. The withholding agreement will specify the type of certifications and documentation upon which the qualified intermediary may rely to ascertain the classification (*e.g.,* corporation or partnership), status (*i.e.,* U.S. or foreign and chapter 4 status) of beneficial owners and payees who receive reportable amounts, reportable payments, and withholdable payments collected by the qualified intermediary for purposes of chapters 3, 4, and 61, section 3406, and, if necessary, entitlement to the benefits of a reduced rate under an income tax treaty. The withholding agreement shall specify if, and to what extent, the qualified intermediary may assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section. It shall also specify the extent to which applicable return filing and information reporting requirements are modified so that, in appropriate cases, the qualified intermediary may report payments to the IRS on an aggregated basis, without having to disclose the identity of beneficial owners and payees. However, the qualified intermediary may be required to provide to the IRS the name and address of those foreign customers who benefit from a reduced rate under an income tax treaty pursuant to the withholding agreement for purposes of verifying entitlement to such benefits, particularly under an applicable limitation on benefits provision. Under the withholding agreement, a qualified intermediary may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. The withholding agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply to qualified intermediaries and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts. In addition, the withholding agreement shall specify the manner in which the IRS will verify compliance with the agreement, including the time and manner for which a qualified intermediary will be required to certify to the IRS regarding its compliance with the withholding agreement (including its performance of a periodic review) and the types of information required to be disclosed as part of the certification. In appropriate cases, the IRS may require review procedures be performed by an approved reviewer (in addition to those performed as part of the periodic review) and may conduct a review of the reviewer's findings. The withholding agreement may include provisions for the assessment and collection of tax in the event that failure to comply with the terms of the withholding agreement results in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the withholding agreement may specify the procedures by which amounts withheld are to be deposited, if different from the deposit procedures under the Code and applicable regulations. To determine whether to enter a withholding agreement and the terms of any particular withholding agreement, the IRS will consider the type of local know-your-customer laws and practices to which the entity is subject (if the entity is an FFI), as well as the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign entity.

(iv) *Assignment of primary withholding responsibility.* Any person (whether a U.S. person or a foreign person) who meets the definition of a withholding agent under § 1.1441–7(a) (for payments subject to chapter 3 withholding) and § 1.1473–1(d) (for withholdable payments) is required to withhold and deposit any amount withheld under §§ 1.1461–1(a) and 1.1474–1(b) and to make the returns prescribed by §§ 1.1461–1(b) and (c), and by 1.1474–1(c), and (d). Under its qualified intermediary withholding agreement, a qualified intermediary may, however, inform a withholding agent from which it receives a payment that it will assume the primary obligation to withhold, deposit, and report amounts under chapters 3 and 4 of the Code and/or under chapter 61 and section 3406 of the Code. For assuming withholding obligations as described in the previous sentence, a qualified intermediary that assumes primary withholding responsibility for payments made to an account under chapter 3 is also required to assume primary withholding responsibility under chapter 4 for payments made to the account that are withholdable payments. Additionally, a qualified intermediary may represent that it assumes chapter 61 reporting and section 3406 obligations for a payment when the qualified intermediary meets the requirements of § 1.6049–4(c)(4)(i) or (ii) for the payment. If a withholding agent makes a payment of an amount subject to withholding under chapter 3, a reportable payment (as defined in section 3406(b)), or a withholdable payment to a qualified intermediary that represents to the withholding agent that it has assumed primary withholding responsibility for the payment, the withholding agent is not required to withhold on the payment. The withholding agent is not required to determine that the qualified intermediary actually performs its primary withholding responsibilities. A qualified intermediary that assumes primary withholding responsibility under chapters 3 and 4 or primary reporting and backup withholding responsibility under chapter 61 and section 3406 is not required to assume

primary withholding responsibility for all accounts it has with a withholding agent but must assume primary withholding responsibility for all payments made to any one account that it has with the withholding agent.

(v) *Withholding statement*—(A) *In general.* A qualified intermediary must provide each withholding agent from which it receives reportable amounts as a qualified intermediary with a written statement (the withholding statement) containing the information specified in paragraph (e)(5)(v)(B) of this section. A withholding statement is not required, however, if all of the information a withholding agent needs to fulfill its withholding and reporting requirements is contained in the withholding certificate. The qualified intermediary withholding agreement will require the qualified intermediary to include information in its withholding statement relating to withholdable payments for purposes of withholding under chapter 4 as described in paragraph (e)(5)(v)(C)(*2*) of this section. The withholding statement forms an integral part of the qualified intermediary's qualified intermediary withholding certificate, and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which qualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, the statement must satisfy the requirements described in paragraph (e)(3)(iv) of this section (applicable to a withholding statement provided by a nonqualified intermediary). The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 4, and 61 and section 3406. For purposes of this section, a withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section, §§ 1.1441–5(d) and (e)(6), and 1.6049–5(d) for a payment, or portion thereof, for which it does not have a valid withholding statement prior to making a payment.

(B) *Content of withholding statement.* The withholding statement must contain sufficient information for a withholding agent to apply the correct rate of withholding on payments from the accounts identified on the statement and to properly report such payments on Forms 1042–S and Forms 1099, as applicable. The withholding statement must—

(*1*) Designate those accounts for which the qualified intermediary acts as a qualified intermediary;

(*2*) Designate those accounts for which qualified intermediary assumes primary withholding responsibility under chapter 3 and chapter 4 of the Code and/or primary reporting and backup withholding responsibility under chapter 61 and section 3406;

(*3*) If applicable, designate those accounts for which the qualified intermediary is acting as a qualified securities lender with respect to a substitute dividend paid in a securities lending or similar transaction;

(*4*) [Reserved].

(*5*) Provide information regarding withholding rate pools, as described in paragraph (e)(5)(v)(C) of this section.

(C) *Withholding rate pools*—(*1*) *In general.* Except to the extent it has assumed both primary withholding responsibility under chapters 3 and 4 of the Code and primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 with respect to a payment, a qualified intermediary shall provide as part of its withholding statement the chapter 3 withholding rate pool information that is required for the withholding agent to meet its withholding and reporting obligations under chapters 3 and 61 of the Code and section 3406. See, however, paragraph (e)(5)(v)(C)(*2*) of this section for when a qualified intermediary may provide a chapter 4 withholding rate pool (as described in paragraph (c)(48) of this section) with respect to a payment that is a withholdable payment. A chapter 3 withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042–S, that is subject to a single rate of withholding paid to a payee that is a foreign person and for which withholding under chapter 4 does not apply. A chapter 3 withholding rate pool may be established by any reasonable method on which the qualified intermediary and a withholding agent agree (*e.g.,* by establishing a separate account for a single chapter 3 withholding rate pool, or by dividing a payment made to a single account into portions allocable to each chapter 3 withholding rate pool). A qualified intermediary may include a separate pool for account holders that are U.S. exempt recipients or may include such accounts in a chapter 3 withholding rate pool to which withholding does not apply. The withholding statement must identify the chapter 4 exemption code (as provided in the instructions to Form 1042–S) applicable to the chapter 3 withholding rate pools contained on the withholding statement. To the extent a qualified intermediary does not assume primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406, a qualified intermediary's withholding statement must establish a separate withholding rate pool for each U.S. non-exempt recipient account holder that the qualified intermediary has disclosed to the withholding agent unless the qualified intermediary uses the alternative procedures in paragraph (e)(5)(v)(C)(*3*) of this section or the account holder is a payee that the qualified intermediary is permitted to include in a chapter 4 withholding rate pool of U.S. payees. A qualified intermediary that is a participating FFI or registered deemed-compliant FFI may include a chapter 4 withholding rate pool of U.S. payees on a withholding statement by applying the rules under paragraph (e)(3)(iv)(A) of this section (by substituting ''qualified intermediary'' for ''nonqualified intermediary'') with respect to an account that it maintains (as described in § 1.1471–5(b)(5)) for the payee of the payment. A qualified intermediary shall determine withholding rate pools based on valid documentation that it obtains under its withholding agreement with the IRS, or if a payment cannot be reliably associated with valid documentation, under the applicable presumption rules. If a qualified intermediary has an account holder that is another intermediary (whether a qualified intermediary or a nonqualified intermediary) or a flow-through entity, the qualified intermediary may combine the account holder information provided by the other intermediary or flow-through entity with the qualified intermediary's direct account holder information to determine the qualified intermediary's chapter 3 withholding rate pools and each of the qualified intermediary's chapter 4 withholding rate pools to the extent provided in its withholding agreement with the IRS.

(*2*) *Withholding rate pool requirements for a withholdable payment.* This paragraph (e)(5)(v)(C)(*2*) modifies the requirements of a withholding statement described in paragraph (e)(5)(v)(C)(*1*) provided by a qualified intermediary with respect to a withholdable payment (including a reportable amount that is a withholdable payment). For such a payment, the regulations applicable to a withholding statement described in

paragraph (e)(5)(v)(C)(*1*) of this section shall apply, except that—

(*i*) If the qualified intermediary provides a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*2*) (describing an FFI withholding statement), the withholding statement may include a chapter 4 withholding rate pool with respect to the portion of the payment allocated to a single pool of recalcitrant account holders (without the need to subdivide into the pools described in § 1.1471–4(d)(6)), including both account holders of the qualified intermediary and of any participating FFI, registered deemed-compliant FFI, or other qualified intermediary for whom the first-mentioned qualified intermediary receives the payment, and nonparticipating FFIs (to the extent permitted) in lieu of reporting chapter 3 withholding rate pools with respect to such persons as described in paragraph (e)(5)(v)(C)(*1*) of this section); or

(*ii*) If the qualified intermediary provides a withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*3*) (describing a chapter 4 withholding statement), the withholding statement may include a chapter 4 withholding rate pool with respect to the portion of the payment allocated to nonparticipating FFIs.

(*3*) *Alternative procedure for U.S. non-exempt recipients.* If permitted under its withholding agreement with the IRS, a qualified intermediary may, by mutual agreement with a withholding agent, establish a single zero withholding rate pool that includes U.S. non-exempt recipient account holders for whom the qualified intermediary has provided Forms W–9 prior to the withholding agent paying any reportable payments, as defined in the qualified intermediary withholding agreement, and foreign persons for which no withholding is required under chapters 3 and 4, and may include payments allocated to a chapter 4 withholding rate pool of U.S. payees. In such a case, the qualified intermediary may also establish a separate withholding rate pool (subject to 28-percent withholding, or other applicable statutory back-up withholding tax rate) that includes only U.S. non-exempt recipient account holders for whom a qualified intermediary has not provided Forms W–9 prior to the withholding agent paying any reportable payments. If a qualified intermediary chooses the alternative procedure of this paragraph (e)(5)(v)(C)(*3*), the qualified intermediary must provide the information required by its withholding agreement to the withholding agent no later than January 15 of the year following the year in which the payments are paid. Failure to provide such information will result in the application of penalties to the qualified intermediary under sections 6721 and 6722, as well as any other applicable penalties, and may result in the termination of the qualified intermediary's withholding agreement with the IRS. A withholding agent shall not be liable for tax, interest, or penalties for failure to backup withhold or report information under chapter 61 of the Code due solely to the errors or omissions of the qualified intermediary. If a qualified intermediary fails to provide the allocation information required by this paragraph (e)(5)(v)(C)(*3*), with respect to U.S. non-exempt recipients, the withholding agent shall report the unallocated amount paid from the withholding rate pool to an unknown recipient, or otherwise in accordance with the appropriate Form 1099 and the instructions accompanying the form.

(D)

Example. The following example illustrates the application of paragraph (e)(5)(v)(C) of this section for a qualified intermediary providing chapter 4 withholding rate pools on an FFI withholding statement provided to a withholding agent. WA makes a payment of U.S. source interest that is a withholdable payment to QI, a qualified intermediary that is an FFI and a non-U.S. payor (as defined in § 1.6049–5(c)(5)), and A and B are account holders of QI (as defined under § 1.1471–5(a)) and are both U.S. non-exempt recipients (as defined paragraph (c)(21) of this section). Ten percent of the payment is attributable to both A and B. A has provided WA with a Form W–9, but B has not provided WA with a Form W–9. QI assumes primary withholding responsibility under chapters 3 and 4 with respect to the payment, 80 percent of which is allocable to foreign payees who are account holders other than A and B. As a participating FFI, QI is required to report with respect to its U.S. accounts under § 1.1471–4(d) (as incorporated into its qualified intermediary agreement). Provided that QI reports A's account as a U.S. account under the requirements referenced in the preceding sentence, QI is not required to provide WA with a Form W–9 from A and may instead include A in a chapter 4 withholding rate pool of U.S. payees, allocating 10% of the payment to this pool. See § 1.6049–4(c)(4)(iii) concerning when reporting under section 6049 for a payment of interest is not required when an FFI that is a non-U.S. payor reports an account holder receiving the payment under its chapter 4 requirements. With respect to B, the interest payment is subject to backup withholding under section 3406. Because B is a recalcitrant account holder of QI for withholdable payments and because QI assumes primary chapter 4 withholding responsibility, however, QI may include the portion of the payment allocated to B with the remaining 80% of the payment for which QI assumes primary withholding responsibility. WA can reliably associate the full amount of the payment based on the withholding statement and does so regardless of whether WA knows B is a U.S. non-exempt recipient that is receiving a portion of the payment. See § 31.3406(g)–1(e) (providing exemption to backup withholding when withholding was applied under chapter 4).

* * * * *

(f) *Effective/applicability date*—(1) *In general.* Except as otherwise provided in paragraphs (e)(4)(ix)(D), (f)(2), and (f)(3) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014 (except for payments to which paragraph (e)(4)(ix)(D) applies, in which case, substitute March 5, 2014, for June 30, 2014), and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. 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.)

(2) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 2000.

(3) *Section 871(m) transactions.* Paragraphs (b)(4)(xxi) through (b)(4)(xxiii), (e)(3)(ii)(E), and (e)(6) of this section apply to payments made on or after September 18, 2015.

(4) [Reserved]. For further guidance, see § 1.1441–1T(f)(4).

■ **Par. 6.** Section 1.1441–1T is added as follows:

§ 1.1441–1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).

(a) through (b)(7)(ii)(A) [Reserved]. For further guidance, see § 1.1441–1(a) through (b)(7)(ii)(A).

(B) *Special rules for establishing that income is effectively connected with the conduct of a U.S. trade or business.* A withholding certificate received after the date of payment to claim under § 1.1441–4(a)(1) that income is effectively connected with the conduct of a U.S. trade or business will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that

states that the information and representations contained on the certificate were accurate as of the time of the payment. The signed affidavit must also state that the beneficial owner has included the income on its U.S. income tax return for the taxable year in which it is required to report the income or, alternatively, that the beneficial owner intends to include the income on a U.S. income tax return for the taxable year in which it is required to report the income and the due date for filing such return (including any applicable extensions) is after the date on which the affidavit is signed. A certificate received within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain the affidavit described in the preceding sentences.

(b)(7)(iii) through (c)(2)(i) [Reserved]. For further guidance, see § 1.1441–1(b)(7)(iii) through (c)(2)(i).

(ii) *Dual Residents.* Individuals will not be treated as U.S. persons for purposes of this section for a taxable year or any portion of a taxable year for which they are a dual resident taxpayer (within the meaning of § 301.7701(b)–7(a)(1) of this chapter) who is treated as a nonresident alien pursuant to § 301.7701(b)–7(a)(1) of this chapter for purposes of computing their U.S. tax liability.

(c)(3) through (c)(3)(i) [Reserved]. For further guidance, see § 1.1441–1(c)(3) through (c)(3)(i).

(ii) *Nonresident alien individual.* The term nonresident alien individual means persons described in section 7701(b)(1)(B), alien individuals who are treated as nonresident aliens pursuant to § 301.7701(b)(7) of this chapter for purposes of computing their U.S. tax liability, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under § 301.7701(b)–1(d) of this chapter. An alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

(c)(4) through (c)(38)(i) [Reserved]. For further guidance, see § 1.1441–1(c)(4) through (c)(38)(i).

(ii) *Hold mail instruction.* Notwithstanding the provisions of paragraph (i) of this section, an address that is subject to a hold mail instruction can be used as a permanent residence address if the person has also provided the withholding agent with documentary evidence establishing residence in the country in which the person claims to be a resident for tax purposes. If, after a withholding certificate is provided, a person's permanent residence address is subsequently subject to a hold mail instruction, this is a change in circumstances requiring the person to provide the documentary evidence described in this paragraph (c)(38)(ii) in order to use the address as a permanent residence address.

(c)(39) through (e)(2)(ii)(A) [Reserved]. For further guidance, see § 1.1441–1(c)(39) through (e)(2)(ii)(A).

(B) *Requirement to collect foreign TIN and date of birth beginning January 1, 2017.* Beginning January 1, 2017, a beneficial owner withholding certificate provided to document an account that is maintained at a U.S. branch or office of a financial institution is required to contain the account holder's foreign TIN and, in the case of an individual account holder, the account holder's date of birth in order for the withholding agent to treat such withholding certificate as valid under paragraph (e)(2) of this section. For withholding certificates associated with payments made on or after January 1, 2018, if an account holder does not have a foreign TIN, the account holder is required to provide a reasonable explanation for its absence (*e.g.,* the country of residence does not provide TINs) in order for the withholding certificate not to be considered invalid as a result of the application of this paragraph (e)(2)(ii)(B). A withholding certificate that does not contain the account holder's date of birth will not be considered invalid as a result of the application of this paragraph (e)(2)(ii)(B) if the withholding agent has the account holder's date of birth information in its files.

(e)(3) through (e)(3)(iv)(C)(*2*) [Reserved]. For further guidance, see § 1.1441–1(e)(3) through (e)(3)(iv)(C)(*2*).

(*3*) *Alternative withholding statement.* In lieu of a withholding statement containing all of the information described in paragraph (e)(3)(iv)(C)(*1*) of this section, a withholding agent may accept from a nonqualified intermediary a withholding statement that meets all of the requirements of this paragraph (e)(3)(iv)(C)(*3*) with respect to a payment. This alternative withholding statement may only be provided by a nonqualified intermediary that provides the withholding agent with the withholding certificates from the beneficial owners (*i.e.,* not documentary evidence) before the payment is made.

(*i*) The withholding statement is not required to contain information that is also included on a withholding certificate (*e.g.,* name, address, TIN (if any), chapter 4 status, GIIN (if any)). The withholding statement is also not required to specify the rate of withholding to which each foreign payee is subject, provided that all of the information necessary to make such determination is provided on the withholding certificate. A withholding agent that uses an alternative withholding statement may not apply a different rate from that which the withholding agent may reasonably conclude from the information on the withholding certificate.

(*ii*) The withholding statement must allocate the payment to every payee required to be reported as described in paragraph (e)(3)(iv)(C)(*1*)(*ii*) of this section.

(*iii*) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapters 3, 4, and 61 of the Code, and section 3406.

(*iv*) The withholding statement must contain a representation from the nonqualified intermediary that the information on the withholding certificates is not inconsistent with any other account information the nonqualified intermediary has for the beneficial owners for determining the rate of withholding with respect to each payee.

(e)(3)(iv)(C)(*4*) through (e)(4)(i)(A) [Reserved]. For further guidance, see § 1.1441–1(e)(3)(iv)(C)(*4*) through (e)(4)(i)(A).

(B) *Electronic Signatures.* A withholding agent, regardless of whether the withholding agent has established an electronic system pursuant to paragraph (e)(4)(iv)(A) or (e)(4)(iv)(C) of this section, may accept a withholding certificate with an electronic signature, provided the electronic signature meets the requirements of paragraph (e)(4)(iv)(B)(3)(ii). In addition, the withholding certificate must reasonably demonstrate to the withholding agent that the form has been electronically signed by the recipient identified on the form (or a person authorized to sign for the person identified on the form). For example, a withholding agent may treat as validly signed a withholding certificate that has, in the signature block, the name of the person authorized to sign, a time and date stamp, and a statement that the certificate has been electronically signed. However, a withholding agent may not treat a withholding certificate with a typed name in the signature line

and no other information as validly signed.

(e)(4)(ii) through (e)(4)(ii)(A)(*1*) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(ii) through (e)(4)(ii)(A)(*1*).

(*2*) *Documentary evidence for treaty claims and treaty statements.* Documentary evidence described in § 1.1441–6(c)(3) or (4) and a statement regarding entitlement to treaty benefits described in § 1.1441–6(c)(5)(i) (treaty statement) shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent except as provided in paragraph (e)(4)(ii)(B) of this section. Notwithstanding the validity period prescribed in this paragraph (e)(4)(ii)(A)(*2*), a treaty statement will cease to be valid if a change in circumstances makes the information on the statement unreliable or incorrect. For accounts opened and treaty statements obtained prior to January 6, 2017, the treaty statement will expire January 1, 2019.

(e)(4)(ii)(B) through (e)(4)(iv)(B)(*4*) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(ii)(B) through (e)(4)(iv)(B)(*4*).

(C) *Form 8233.* A withholding agent may establish a system for a beneficial owner or payee to provide Form 8233 electronically, provided the system meets the requirements of paragraph (e)(4)(iv)(B)(*1*) through (*4*) of this section (replacing ''Form W–8'' with ''Form 8233'' each place it appears).

(e)(4)(iv)(D) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(iv)(D).

(E) *Third party repositories.* A withholding certificate will be considered furnished for purposes of this section (including paragraph (e)(1)(ii)(A)(*1*) of this section) by the person providing the certificate, and a withholding agent may rely on an otherwise valid withholding certificate received electronically from a third party repository, if the withholding certificate was uploaded or provided to a third party repository and there are processes in place to ensure that the withholding certificate can be reliably associated with a specific request from the withholding agent and a specific authorization from the person providing the certificate (or an agent of the person providing the certificate) for the withholding agent making the request to receive the withholding certificate. Each request and authorization must be associated with a specific payment, and, as applicable, a specific obligation maintained by a withholding agent. A third party repository may also be used for withholding statements, and a withholding agent may also rely on an otherwise valid withholding statement, if the intermediary providing the withholding certificates and withholding statement through the repository provides an updated withholding statement in the event of any change in the information previously provided (*e.g.,* a change in the composition of a partnership or a change in the allocation of payments to the partners) and ensures there are processes in place to update withholding agents when there is a new withholding statement (and withholding certificates, as necessary) in the event of any change that would affect the validity of the prior withholding certificates or withholding statement. A third party repository, for purposes of this paragraph, is an entity that maintains withholding certificates (including certificates accompanied by withholding statements) but is not an agent of the applicable withholding agent or the person providing the certificate. The following examples illustrate the provisions of this paragraph (e)(4)(iv)(E):

Example 1. A, a foreign corporation, completes a Form W–8BEN–E and a Form W–8ECI and uploads the forms to X, a third party repository (X is an entity that maintains withholding certificates on an electronic data aggregation site). WA, a withholding agent, enters into a contract with A under which it will make payments to A of U.S. source FDAP that are not effectively connected with A's conduct of a trade or business in the United States. X is not an agent of WA or A. Prior to receiving a payment, A sends WA an email with a link that authorizes WA to access A's Form W–8BEN–E on X's system. The link does not authorize WA to access A's Form W–8ECI. X's system meets the requirements of a third party repository, and WA can treat the Form W–8BEN–E as furnished by A.

Example 2. The facts are the same as *Example 1* of this paragraph (e)(4)(iv)(E), and WA and A enter into a second contract under which WA will make payments to A that are effectively connected with A's conduct of a trade or business in the United States. A sends WA an email with a link that gives WA access to A's Form W–8ECI on X's system. The link in this second email does not give WA access to A's Form W–8BEN–E. A's email also clearly indicates that the link is associated with payments received under the second contract. X's system meets the requirements of a third party repository, and WA can treat the Form W–8ECI as furnished by A.

Example 3. FP is a foreign partnership that is acting on behalf of its partners, A and B, who are both foreign individuals. FP completes a Form W–8IMY and uploads it to X, a third party repository. FP also uploads Forms W–8BEN from both A and B and a valid withholding statement allocating 50% of the payment to A and 50% to B. WA is a withholding agent that makes payments to FP as an intermediary for A and B. FP sends WA an email with a link to its Form W–8IMY on X's system. The link also provides WA access to FP's withholding statement and A's and B's Forms W–8BEN. FP also has processes in place that ensure it will provide a new withholding statement or withholding certificate to X's repository in the event of a change in the information previously provided that affects the validity of the withholding statement and that ensure it will update WA if there is a new withholding statement. X's system meets the requirements of a third party repository, and WA can treat the Form W–8IMY (and withholding statement) as furnished by FP. In addition, because FP is acting as an agent of A and B, the beneficial owners, WA can treat the Forms W–8BEN for A and B as furnished by A and B.

(e)(4)(v) through (f)(3) [Reserved]. For further guidance, see § 1.1441–1(e)(4)(v) through (f)(3).

(4) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017.

(g) *Expiration date.* The applicability of this section expires on December 30, 2019.

■ **Par. 7.** Section 1.1441–2 is amended by removing paragraph (e)(7), redesignating paragraph (e)(8) as paragraph (e)(7), adding new paragraph (a)(8), and revising paragraph (f).

The revisions and additions read as follows:

§ 1.1441–2 Amounts subject to withholding.

(a) * * *

(8) [Reserved]. For further guidance, see § 1.1441–2T(a)(8).

* * * * *

(f) *Effective/applicability date*—(1) This section applies to payments made after December 31, 2000. Paragraphs (b)(5) and (d)(4) of this section apply to payments made after August 1, 2006. Paragraph (b)(6) of this section applies to payments made on or after January 23, 2012. Paragraph (e)(8) of this section applies to payments made on or after September 18, 2015.

(2) [Reserved]. For further guidance, see § 1.1441–2T(f)(2).

■ **Par. 8.** Section 1.1441–2T is added to read as follows:

§ 1.1441–2T Amounts subject to withholding (temporary).

(a) through (a)(7) [Reserved]. For further guidance, see § 1.1441–2(a) through (a)(7).

(8) Amounts of United States source gross transportation income, as defined in section 887(b)(1), that is taxable under section 887(a).

(b) through (f)(1) [Reserved]. For further guidance, see § 1.1441–2(b) through (f)(1).

(2) *Effective/applicability date.* This section applies on January 6, 2017.

(g) *Expiration date.* The applicability of this section expires on December 30, 2019.

■ **Par. 9.** Section 1.1441–3 is amended by:

■ 1. Revising paragraphs (a), (c)(4)(i), (d), and (i).

■ 2. Removing paragraph (j).

The revisions read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

(a) *General rule*—(1) *Withholding on gross amount.* Except as otherwise provided in regulations under section 1441, the amount subject to withholding under § 1.1441–1 is the gross amount of income subject to withholding that is paid to a foreign person. The gross amount of income subject to withholding may not be reduced by any deductions, except to the extent that one or more personal exemptions are allowed as provided under § 1.1441–4(b)(6).

(2) *Coordination with chapter 4.* A withholding agent making a payment that is both a withholdable payment and an amount subject to withholding under § 1.1441–2(a) and that has withheld tax as required under chapter 4 from such payment is not required to withhold under this section notwithstanding paragraph (a)(1) of this section. See § 1.1474–6(b)(1) for the allowance for a withholding agent to credit withholding applied under chapter 4 against its liability for tax due under sections 1441, 1442, or 1443, and see § 1.1474–6(b)(1) for the rule allowing a withholding agent to credit withholding applied under chapter 4 against its liability for tax due under sections 1441, 1442, or 1443, and § 1.1474–6(b)(2) for when such withholding is considered applied by a withholding agent. If the withholdable payment is not required to be withheld upon under chapter 4, then the withholding agent must apply the provisions of § 1.1441–1 to determine whether withholding is required under sections 1441, 1442, or 1443.

* * * * *

(c) * * *

(4) *Coordination with withholding under section 1445*—(i) *In general.* A distribution from a U.S. Real Property Holding Corporation (USRPHC) (or from a corporation that was a USRPHC at any time during the five-year period ending on the date of distribution) with respect to stock that is a U.S. real property interest under section 897(c) or from a Real Estate Investment Trust (REIT) or other entity that is a qualified investment entity (QIE) under section 897(h)(4) with respect to its stock is subject to the withholding provisions under section 1441 (or section 1442 or 1443) and section 1445. A USRPHC making a distribution shall be treated as satisfying its withholding obligations under both sections if it withholds in accordance with one of the procedures described in either paragraph (c)(4)(i)(A) or (B) of this section. A USRPHC must apply the same withholding procedure to all the distributions made during the taxable year. However, the USRPHC may change the applicable withholding procedure from year to year. For rules regarding distributions by REITs and other entities that are QIEs, see paragraph (c)(4)(i)(C) of this section. To the extent withholding under sections 1441, 1442, or 1443 applies under this paragraph (c)(4)(i) to any portion of a distribution that is a withholdable payment, see paragraph (a)(2) for rules coordinating withholding under chapter 4.

(A) *Withholding under section 1441.* The USRPHC may choose to withhold on a distribution only under section 1441 (or 1442 or 1443) and not under section 1445. In such a case, the USRPHC must withhold under section 1441 (or 1442 or 1443) on the full amount of the distribution, whether or not any portion of the distribution represents a return of basis or capital gain. If a reduced tax rate under an income tax treaty applies to the distribution by the USRPHC, then the applicable rate of withholding on the distribution shall be no less than 15 percent for distributions after February 16, 2016, and no less than 10 percent for distributions on or before February 16, 2016, unless the applicable treaty specifies an applicable lower rate for distributions from a USRPHC, in which case the lower rate may apply.

(B) *Withholding under both sections 1441 and 1445.* As an alternative to the procedure described in paragraph (c)(4)(i)(A) of this section, a USRPHC may choose to withhold under both sections 1441 (or 1442 or 1443) and 1445 under the procedures set forth in this paragraph (c)(4)(i)(B). The USRPHC must make a reasonable estimate of the portion of the distribution that is a dividend under paragraph (c)(2)(ii)(A) of this section, and must—

(*1*) Withhold under section 1441 (or 1442 or 1443) on the portion of the distribution that is estimated to be a dividend under paragraph (c)(2)(ii)(A) of this section; and

(*2*) Withhold under section 1445(e)(3) and § 1.1445–5(e) on the remainder of the distribution or on such smaller portion based on a withholding certificate obtained in accordance with § 1.1445–5(e)(3)(iv).

(C) *Coordination with REIT/QIE withholding.* Withholding is required under section 1441 (or 1442 or 1443) on the portion of a distribution from a REIT or other entity that is a QIE that is not designated (for REITs) or reported (for regulated investment companies that are QIEs) as a capital gain dividend, a return of basis, or a distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE that is treated as a capital gain under section 301(c)(3). A distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE is, however, subject to withholding under section 1445, unless the interest in the REIT or QIE is not a U.S. real property interest (*e.g.,* an interest in a domestically controlled REIT or QIE under section 897(h)(2)). In addition, withholding is required under section 1445 on the portion of the distribution designated (for REITs) or reported (for regulated investment companies that are QIEs) as a capital gain dividend to the extent that it is attributable to the sale or exchange of a U.S. real property interest. See § 1.1445–8.

* * * * *

(d) *Withholding on payments that include an undetermined amount of income*—(1) *In general.* Where the withholding agent makes a payment and does not know at the time of payment the amount that is subject to withholding because the determination of the source of the income or the calculation of the amount of income subject to tax depends upon facts that are not known at the time of payment, then the withholding agent must withhold an amount under § 1.1441–1 based on the entire amount paid that is necessary to ensure that the tax withheld is not less than 30 percent (or other applicable percentage) of the amount that could be from sources within the United States or income subject to tax. See § 1.1471–2(a)(5) for similar rules under chapter 4 that apply to payments made to payees that are entities. The amount so withheld shall not exceed 30 percent of the amount paid. With respect to a payment described in paragraph (d)(1) or (2) of this section, the withholding agent may elect to retain 30 percent of the payment to hold in escrow until the earlier of the date that the amount of income from sources within the United States or the taxable amount can be determined or one year from the date the amount is placed is in escrow, at which time the withholding becomes due under § 1.1441–1, or, to the extent that withholding is not required, the escrowed amount must be paid to the payee.

(2) *Withholding on certain gains.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim regarding the amount of gain described in § 1.1441–2(c) if the beneficial owner withholding certificate, or other appropriate withholding certificate, states the beneficial owner's basis in the property giving rise to the gain. In the absence of a reliable representation on a withholding certificate, the withholding agent must withhold an amount under § 1.1441–1 that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the recognized gain. For this purpose, the recognized gain is determined without regard to any deduction allowed by the Code from the gains. The amount so withheld shall not exceed 30 percent of the amount payable by reason of the transaction giving rise to the recognized gain. See § 1.1441–1(b)(8) regarding adjustments in the case of overwithholding.

* * * * *

(i) *Effective/applicability date.* Except as otherwise provided in paragraphs (g)(2) and (h)(3) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016. For payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 as revised April 1, 2013.)

§ 1.1441–3T [Removed]

■ **Par. 10.** Section 1.1441–3T is removed.

■ **Par. 11.** Section 1.1441–4 is amended by revising paragraphs (a)(2)(ii), (b)(2)(i), (b)(2)(iii), (b)(2)(v), (b)(3), and (g) to read as follows:

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) * * *

(2) * * *

(ii) *Special rules for U.S. branches of foreign persons*—(A) *U.S. branches of certain foreign banks or foreign insurance companies.* A payment to a U.S. branch described in § 1.1441–1(b)(2)(iv)(B)(3) is presumed to be effectively connected with the conduct of a trade or business in the United States without the need to furnish a certificate if the withholding agent obtains an EIN for the entity, unless the U.S. branch provides a U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v) that represents otherwise. If no certificate is furnished but the income is not, in fact, effectively connected income, then the branch must withhold whether the payment is collected on behalf of other persons or on behalf of another branch of the same entity. See § 1.1441–1(b)(2)(iv) and (b)(6) for general rules applicable to payments to U.S. branches of foreign persons.

(B) *Other U.S. branches.* See § 1.1441–1(b)(2)(iv)(E) for similar procedures for other U.S. branches to the extent provided in a determination letter from the IRS.

* * * * *

(b) * * *

(2) *Manner of obtaining withholding exemption under tax treaty*—(i) *In general.* In order to obtain the exemption from withholding by reason of a tax treaty provided by paragraph (b)(1)(iv) of this section, a nonresident alien individual must submit a withholding certificate (described in paragraph (b)(2)(ii) of this section) to each withholding agent from whom amounts are to be received. A separate withholding certificate must be filed for each taxable year of the alien individual. If the withholding agent is satisfied that an exemption from withholding is warranted (see paragraph (b)(2)(iii) of this section), the withholding certificate shall be accepted in the manner set forth in paragraph (b)(2)(iv) of this section. The exemption from withholding becomes effective for payments made at least ten days after a copy of the accepted withholding certificate is forwarded to the IRS. The withholding agent may rely on an accepted withholding certificate only if the IRS has not objected to the certificate. For purposes of this paragraph (b)(2)(i), the IRS will be considered to have not objected to the certificate if it has not notified the withholding agent within a 10-day period beginning from the date that the withholding certificate is forwarded to the IRS pursuant to paragraph (b)(2)(v) of this section. After expiration of the 10-day period, the withholding agent may rely on the withholding certificate retroactive to the date of the first payment covered by the certificate. The fact that the IRS does not object to the withholding certificate within the 10-day period provided in this paragraph (b)(2)(i) shall not preclude the IRS from examining the withholding agent at a later date with respect to facts that the withholding agent knew or had reason to know regarding the payment and eligibility for a reduced rate and that were not disclosed to the IRS as part of the 10-day review process.

* * * * *

(iii) *Review by withholding agent.* The exemption from withholding provided by paragraph (b)(1)(iv) of this section shall not apply unless the withholding agent accepts (in the manner provided in paragraph (b)(2)(iv) of this section) the statement on Form 8233, ''Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual,'' (or successor form) supplied by the nonresident alien individual. Before accepting the statement, the withholding agent must examine the statement. If the withholding agent knows or has reason to know that any of the facts or assertions on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption cannot be readily determined, the withholding agent may not accept the statement on Form 8233 and is required to withhold under this section. If the withholding agent accepts the statement and subsequently finds that any of the facts or assertions contained on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption can no longer be readily determined, then the withholding agent shall promptly so notify the IRS by letter, and the withholding agent is not relieved of liability to withhold on any amounts still to be paid. If the withholding agent is notified by the IRS that the eligibility of the individual's compensation for the exemption is in doubt or that such compensation is not eligible for the exemption, the withholding agent is required to withhold under this section. The rules of this paragraph (b)(2) are illustrated by the following examples.

Example 1. C, a nonresident alien individual, submits Form 8233 to W, a withholding agent. The statement on Form 8233 does not include all the information required by paragraph (b)(2)(ii) of this section. Therefore, W has reason to know that he or she cannot readily determine whether C's compensation for personal services is eligible for an exemption from withholding and, therefore, W must withhold.

Example 2. D, a nonresident alien individual, is performing services for W, a withholding agent. W has accepted a statement on Form 8233 submitted by D, according to the provisions of this section. W receives notice from the IRS that the eligibility of D's compensation for a withholding exemption is in doubt. Therefore, W has reason to know that the eligibility of the compensation for a withholding exemption cannot be readily determined, as of the date W receives the notification, and W must withhold tax under section 1441 on amounts paid after receipt of the notification.

Example 3. E, a nonresident alien individual, submits Form 8233 to W, a

withholding agent for whom E is to perform personal services. The statement contains all the information requested on Form 8233. E claims an exemption from withholding based on a personal exemption amount computed on the number of days E will perform personal services for W in the United States. If W does not know or have reason to know that any statement on the Form 8233 is false or that the eligibility of E's compensation for the withholding exemption cannot be readily determined, W can accept the statement on Form 8233 and exempt from withholding the appropriate amount of E's income.

* * * * *

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted under paragraph (b)(2)(iv) of this section to the IRS within five days of such acceptance. The withholding agent shall retain a copy of Form 8233.

(3) *Withholding agreements.* Compensation for personal services of a nonresident alien individual who is engaged during the taxable year in the conduct of a trade or business within the United States may be wholly or partially exempted from the withholding required by § 1.1441–1 if an agreement is reached between the IRS and the alien individual with respect to the amount of withholding required. Such agreement shall be available in the circumstances and in the manner set forth by the Internal Revenue Service, and shall be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current taxable year.

* * * * *

(g) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016. For payments made after December 31, 2000, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

* * * * *

§ 1.1441–4T [Removed]

■ **Par. 12.** Section 1.1441–4T is removed.

■ **Par. 13.** Section 1.1441–5 is amended by:

■ 1. Revising paragraphs (b)(2)(iii), (b)(2)(vi), (c)(1)(i) introductory text, (c)(1)(i)(C), (c)(1)(iv) and (v), (c)(2)(i) through (iii), (c)(2)(iv)(A) and (B), (c)(3)(i) and (ii), (c)(3)(iii)(A), (c)(3)(iv) and (v), (d)(2) through (4), (e)(3)(iii), (e)(5)(i) and (ii), (e)(5)(iii)(A), (e)(5)(iv) and (v), (e)(6)(ii), (f), and (g) to read as follows:

§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.

* * * * *

(b) * * *

(2) * * *

(iii) *U.S. complex trusts and U.S. estates.* A U.S. trust that is not a trust described in section 651(a) (see paragraph (b)(2)(ii) of this section) or sections 671 through 679 (see paragraph (b)(2)(iv) of this section) (a U.S. complex trust) is required to withhold under chapter 3 of the Internal Revenue Code (Code) as a withholding agent on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441–2(a)) that is, or is required to be, distributed currently. The U.S. complex trust shall withhold when a distribution is made to a foreign beneficiary. The trust may use the same procedures regarding an estimate of the amount subject to withholding as a U.S. simple trust under paragraph (b)(2)(ii) of this section. To the extent an amount subject to withholding is required to be, but is not actually, distributed, the U.S. complex trust must withhold on the foreign beneficiary's allocable share at the time the income is required to be reported on Form 1042–S under § 1.1461–1(c), without extension. A U.S. estate is required to withhold under chapter 3 of the Code on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441–2(a)) that is actually distributed. A U.S. estate may also use the reasonable estimate procedures of paragraph (b)(2)(ii) of this section. However, those procedures apply to an estate that has a taxable year other than a calendar year only if the estate files an amended return on Form 1042 for the calendar year in which the distribution was made and pays the underwithheld tax and interest within 60 days after the close of the taxable year in which the distribution was made.

* * * * *

(vi) *Coordination with chapter 4 requirements for U.S. partnerships, trusts, and estates.* To the extent that a U.S. partnership is required to withhold on an amount under chapter 4 with respect to a partner, beneficiary, or owner, the partnership, trust, or estate must apply the rules described in § 1.1473–1(a)(5) to determine when it must withhold on the amount under chapter 4. In a case in which withholding applies under chapter 4 to such an amount, see § 1.1441–3(a)(2) to coordinate with withholding that otherwise applies to such an amount under this paragraph (b).

(c) *Foreign partnerships*—(1) *Determination of payee*—(i) *Payments treated as made to partners.* Except as otherwise provided in paragraph (c)(1)(ii) or (iv) of this section, the payees of a payment to a person that the withholding agent may treat as a nonwithholding foreign partnership under paragraph (c)(3)(i) or (d)(2) of this section are the partners (looking through partners that are foreign intermediaries or flow-through entities) as follows—

* * * * *

(C) If the withholding agent can reliably associate a partner's distributive share of the payment with a qualified intermediary withholding certificate under § 1.1441–1(e)(3)(ii), a nonqualified intermediary withholding certificate under § 1.1441–1(e)(3)(iii), or a U.S. branch certificate under § 1.1441–1(e)(3)(v) (including one provided by a territory financial institution), then the rules of § 1.1441–1(b)(2)(v) shall apply to determine who the payee is in the same manner as if the partner's distributive share of the payment had been paid directly to such intermediary or U.S. branch or territory financial institution;

* * * * *

(iv) *Coordination with chapter 4 for payments made to foreign partnerships.* A withholding agent that makes a payment of U.S. source FDAP income to a foreign partnership that is a withholdable payment to which withholding under chapter 4 applies must apply the rules described in § 1.1473–1(a)(5)(vi) to determine when the payment is treated as made to a partner in the partnership for purposes of chapter 4. In a case in which withholding applies under chapter 4 to a withholdable payment made to a foreign partnership, see § 1.1441–3(a)(2) to coordinate with withholding otherwise required under this paragraph (c) with respect to the amount of the payment included in the gross income of a partner. For when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee include in the pool, see § 1.1441–1(e)(3)(iv)(C)(*2*) (substituting the term *nonwithholding foreign partnership* for the term *nonqualified intermediary*).

(v) *Examples.* The rules of paragraphs (c)(1)(i) and (ii) of this section are illustrated by the following examples. Each example assumes that all payments are not withholdable

payments and thus no withholding applies under chapter 4.

Example 1. FP is a nonwithholding foreign partnership organized in Country X. FP has two partners, FC, a foreign corporation, and USP, a U.S. partnership. USWH, a U.S. withholding agent, makes a payment of U.S. source interest to FP that is not a withholdable payment. FP has provided USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner withholding certificate from FC and a Form W–9, ''Request for Taxpayer Identification Number and Certification,'' from USP together with the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the payment of interest with the withholding certificates from FC and USP. Under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC and USP.

Example 2. The facts are the same as in *Example 1,* except that FP1, a nonwithholding foreign partnership, is a partner in FP rather than USP. FP1 has two partners, A and B, both foreign persons. FP provides USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner withholding certificate from FC and a nonwithholding foreign partnership certificate from FP1. In addition, foreign beneficial owner withholding certificates from A and B are associated with the nonwithholding foreign partnership withholding certificate from FP1. FP also provides the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the interest payment with the withholding certificates provided by FC, A, and B. Therefore, under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC, A, and B.

Example 3. USWH makes a payment of U.S. source dividends to WFP, a withholding foreign partnership, that is not a withholdable payment. WFP has two partners, FC1 and FC2, both foreign corporations. USWH can reliably associate the payment with a valid withholding foreign partnership withholding certificate from WFP. Therefore, under paragraph (c)(1)(ii)(A) of this section, WFP is the payee of the interest.

Example 4. USWH makes a payment of U.S. source royalties that is not a withholdable payment to FP, a foreign partnership. USWH can reliably associate the royalties with a valid withholding certificate from FP on which FP certifies that the income is effectively connected with the conduct of a trade or business in the United States. Therefore, under paragraph (c)(1)(ii)(B) of this section, FP is the payee of the royalties.

(2) *Withholding foreign partnerships*—(i) *Reliance on claim of withholding foreign partnership status.* A withholding foreign partnership is a foreign partnership that has entered into an agreement with the IRS, as described in paragraph (c)(2)(ii) of this section, with respect to distributions and guaranteed payments it makes to its partners. A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(2)(iv) of this section may treat the person to whom it makes the payment as a withholding foreign partnership for purposes of withholding under chapters 3 and 4 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Code. Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for its partners. Although the withholding foreign partnership generally will be required to obtain withholding certificates or other appropriate documentation from its partners pursuant to its agreement with the IRS, it generally will not be required to attach such documentation to its withholding foreign partnership withholding certificate to the extent it is permitted to act as a withholding foreign partnership with respect to the payment under its agreement. In addition, the IRS may permit a foreign partnership to act as a qualified intermediary under § 1.1441–1(e)(5)(ii)(D) with respect to its partners in appropriate circumstances.

(ii) *Withholding agreement.* The IRS may, upon request, enter into a withholding agreement with a foreign partnership pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a foreign partnership shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors as defined in § 1.6049–4(a) under chapters 3, 4, and 61 of the Code, section 3406, the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the withholding agreement. Under the withholding agreement, a foreign partnership may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. For a foreign partnership that is an FFI, the withholding agreement will require the partnership to assume the requirements of a participating FFI, a registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1). The withholding agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply to the withholding foreign partnership and its partners and the extent to which applicable procedures may be modified. In particular, the withholding agreement may allow a withholding foreign partnership to claim refunds of overwithheld amounts on behalf of its customers. In addition, the withholding agreement must specify the manner in which the IRS will verify the partnership's compliance with its agreement, including the requirements for a periodic review of the partnership's compliance with the withholding agreement and the procedures for the partnership to certify to its compliance with the withholding agreement. A withholding foreign partnership must file a return on Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' and information returns on Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding.'' The withholding agreement may also require a withholding foreign partnership to file a partnership return under section 6031(a) and partner statements under 6031(b), including for each U.S. partner to the extent required in the agreement. Additionally, a partnership that is an FFI will be required to file Form 8966, ''FATCA Report'' to the extent provided in the withholding agreement.

(iii) *Withholding responsibility.* A withholding foreign partnership must assume primary withholding responsibility under both chapters 3 and 4 of the Code to the extent required in the withholding agreement. It is not required to provide information to the withholding agent regarding each partner's distributive share of the payment (including a withholdable payment). The withholding foreign partnership will be responsible for reporting the payments under §§ 1.1461–1(c), 1.1474–1(d), and chapter 61 of the Code and filing Form 1042 (to the extent required in the withholding agreement). A withholding agent making a payment to a withholding foreign partnership is not required to withhold any amount under chapters 3 and 4 of the Code on the payment unless it has actual knowledge or reason to know that the foreign partnership is not acting as a withholding foreign partnership with respect to the payment or has not withheld to the extent

required. The withholding foreign partnership shall withhold the payments under the same procedures and at the same time as prescribed for withholding by a U.S. partnership under paragraph (b)(2) of this section, except that, for purposes of determining the partner's status, the provisions of paragraph (d)(4) of this section shall apply.

* * * * *

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), the employer identification number of the partnership, the country under the laws of which the partnership is created or governed, the chapter 4 status of the partnership if required for purposes of chapter 4 or if the partnership provides (or will provide) a withholding statement associated with the Form W–8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees under § 1.6049–4(c)(4) with respect to its partners, and the GIIN of the partnership (if applicable). If the partnership provides (or will provide) a chapter 4 withholding rate pool of U.S. payees as described in the preceding sentence, the partnership must certify to its chapter 4 status as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI);

(B) A certification that the partnership is a withholding foreign partnership within the meaning of paragraph (c)(2)(i) of this section, and, for a partnership that is an FFI receiving a withholdable payment, a certification that the partnership is acting as a participating FFI, a registered deemed-compliant FFI, or a nonreporting IGA FFI (as defined in § 1.1471–1(b)(83)); and

* * * * *

(3) *Nonwithholding foreign partnerships*—(i) *Reliance on claim of foreign partnership status.* A withholding agent may treat a person as a nonwithholding foreign partnership if it receives from that person a nonwithholding foreign partnership withholding certificate as described in paragraph (c)(3)(iii) of this section. A withholding agent that does not receive a nonwithholding foreign partnership withholding certificate or does not receive a valid withholding certificate from an entity it knows, or has reason to know, is a foreign partnership must apply the presumption rules of §§ 1.1441–1(b)(3) and 1.6049–5(d) and paragraphs (d) and (e)(6) of this section. In addition, to the extent a withholding agent cannot, prior to a payment, reliably associate the payment with valid documentation from a payee that is associated with the nonwithholding foreign partnership withholding certificate or has insufficient information to report the payment on Form 1042–S or Form 1099, to the extent reporting is required, the withholding agent must apply the presumption rules. See § 1.1441–1(b)(2)(vii)(A) and (B) for rules regarding reliable association. See, however, § 1.1441–1(e)(3)(iv)(C)(*2*) for when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in the pool (substituting the term nonwithholding foreign partnership for the term nonqualified intermediary). See also § 1.1441–1(e)(3)(iv)(A) for when a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees. See paragraph (c)(3)(iv) of this section and § 1.1441–1(e)(3)(iv) for alternative procedures permitting allocation information to be received after a payment is made.

(ii) *Reliance on claim of reduced withholding by a partnership for its partners.* This paragraph (c)(3)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a nonwithholding foreign partnership. To the extent that a withholding agent treats a payment to a nonwithholding foreign partnership as a payment to the nonwithholding foreign partnership's partners (whether direct or indirect) in accordance with paragraph (c)(1)(i) of this section, it may rely on a claim for reduced withholding by the partner if, prior to the payment, the withholding agent can reliably associate the payment (within the meaning of § 1.1441–1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from the partner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i), documentary evidence described in § 1.1441–6(c)(3) or (4) or § 1.6049–5(c)(1) (for a partner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441–1(c)(6)), a Form W–9 described in § 1.1441–1(d) (for a partner claiming to be a U.S. payee), a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section, or a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees. For when the withholding agent can reliably associate the payment with a chapter 4 withholding rate pool, see paragraph (c)(3)(i) of this section. See also § 1.1441–3(a)(2) (coordinating withholding under chapter 3 when withholding under chapter 4 is applied to a payment). Unless a nonwithholding foreign partnership withholding certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each portion of the payment that represents an item of income includible in the distributive share of a partner as required under paragraph (c)(3)(iii)(C) of this section. When making a claim for several partners, the partnership may present a single nonwithholding foreign partnership withholding certificate to which the partners' certificates or other appropriate documentation are associated. Where the nonwithholding foreign partnership withholding certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States under paragraph (c)(3)(iii)(D) of this section, the claim may be presented without having to identify any partner's distributive share of the payment.

* * * * *

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), the employer identification number of the partnership, if any, the country under the laws of which the partnership is created or governed, and the chapter 4 status of the partnership (for a nonwithholding foreign partnership receiving a withholdable payment or providing a withholding statement associated with the Form W–8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees), and the GIIN of the partnership (if applicable);

* * * * *

(iv) *Withholding statement provided by nonwithholding foreign partnership and coordination with chapter 4.* The provisions of § 1.1441–1(e)(3)(iv) (regarding a withholding statement) shall apply to a nonwithholding foreign partnership by substituting the term nonwithholding foreign partnership for the term nonqualified intermediary, including when a nonwithholding foreign partnership may provide to a withholding agent a withholding statement that includes a chapter 4 withholding rate pool in lieu of information with respect to each partner that is a payee of a payment.

(v) *Withholding and reporting by a foreign partnership.* A nonwithholding foreign partnership described in this paragraph (c)(3) that receives an amount subject to withholding (as defined in § 1.1441–2(a)) shall be required to withhold and report such payment under chapter 3 of the Code and the regulations thereunder except as otherwise provided in this paragraph (c)(3)(v). A nonwithholding foreign partnership shall not be required to withhold and report if it has provided a valid nonwithholding foreign partnership withholding certificate, it has provided all of the information required by paragraph (c)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1461–1(c). A nonwithholding foreign partnership is also not required to withhold and report under this paragraph (c)(3) to the extent that withholding under chapter 4 was applied to a payment that is includible in the gross income of a partner in the partnership. See also § 1.1441–3(a)(2) for coordination rules when withholding under chapter 4 has been applied to a withholdable payment. A withholding foreign partnership's obligations to withhold and report shall be determined in accordance with its withholding foreign partnership agreement.

(d) * * *

(2) *Determination of partnership status as U.S. or foreign in the absence of documentation.* In the absence of a valid representation of U.S. partnership status in accordance with paragraph (b)(1) of this section or of foreign partnership status in accordance with paragraph (c)(2)(i) or (c)(3)(i) of this section, the withholding agent shall determine the classification of the payee under the presumptions set forth in § 1.1441–1(b)(3)(ii). If the withholding agent treats the payee as a partnership under § 1.1441–1(b)(3)(ii), the withholding agent shall apply the presumptions set forth in § 1.1441–1(b)(3)(iii)(A)(*1*) (applied by substituting the term *partnership* for the term *exempt recipient*) to determine whether to treat the partnership as a U.S. person or foreign person. For rules regarding reliable association with a withholding certificate from a domestic or a foreign partnership, see § 1.1441–1(b)(2)(vii).

(3) *Determination of partners' status in the absence of certain documentation.* If a nonwithholding foreign partnership has provided a nonwithholding foreign partnership withholding certificate under paragraph (c)(3)(iii) of this section that would be valid except that the withholding agent cannot reliably associate all or a portion of the payment with valid documentation from a partner of the partnership, then the withholding agent may apply the presumption rule of this paragraph (d)(3) with respect to all or a portion of the payment for which documentation has not been received. See § 1.1441–1(b)(2)(vii)(A) and (B) for rules regarding reliable association. The presumption rule of this paragraph (d)(3) also applies to a person that is presumed to be a foreign partnership under the rule of paragraph (d)(2) of this section. Any portion of a payment that the withholding agent cannot treat as reliably associated with valid documentation from a partner may be presumed made to a foreign payee. As a result, any payment of an amount subject to withholding is subject to withholding at a rate of 30 percent. Any payment that is presumed to be made to an undocumented foreign payee must be reported on Form 1042–S. See § 1.1461–1(c). For a payment described in this paragraph (d)(3) that is a withholdable payment, see § 1.1471–3(f)(5) for the presumption rule for determining the payee's chapter 4 status to determine whether withholding under chapter 4 applies to the payment.

(4) *Determination by a withholding foreign partnership of the status of its partners.* Except as otherwise provided in the agreement described in paragraph (c)(2) of this section, a withholding foreign partnership shall determine whether the partners or some other persons are the payees of the partners' distributive shares of any payment made by a withholding foreign partnership by applying the rules of § 1.1441–1(b)(2), paragraph (c)(1) of this section (in the case of a partner that is a foreign partnership), and paragraph (e)(3) of this section (in the case of a partner that is a foreign estate or a foreign trust). Further, the provisions of paragraph (d)(3) of this section shall apply to determine the status of partners and the applicable withholding rates to the extent that, at the time the foreign partnership is required to withhold on a payment, it cannot reliably associate the amount with documentation for any one or more of its partners.

(e) * * *

(3) * * *

(iii) *Coordination with chapter 4 for payments made to foreign simple trusts and foreign grantor trusts.* A withholding agent that makes a payment of U.S. source FDAP income to a foreign simple trust or foreign grantor trust that is a withholdable payment to which withholding under chapter 4 applies must apply the rules described in § 1.1473–1(a)(5)(vi) to determine when the payment is treated as made to a beneficiary or owner of the trust for purposes of chapter 4. In a case in which withholding applies under chapter 4 to a withholdable payment made to a foreign simple trust or foreign grantor trust, see § 1.1441–3(a)(2) to coordinate withholding otherwise required under this paragraph (e) with respect to the amount of the payment included in the gross income of the payee of the payment. For when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in the pool, see § 1.1441–1(e)(3)(iv)(C)(*2*) (substituting the term *nonwithholding foreign trust* for the term *nonqualified intermediary*).

* * * * *

(5) *Foreign simple trust and foreign grantor trust*—(i) *Reliance on claim of foreign simple trust or foreign grantor trust status.* A withholding agent may treat a person as a foreign simple trust or foreign grantor trust if it receives from that person a foreign simple trust or foreign grantor trust withholding certificate as described in paragraph (e)(5)(iii) of this section. A withholding agent must apply the presumption rules of §§ 1.1441–1(b)(3) and 1.6049–5(d) and paragraphs (d) and (e)(6) of this section to the extent it cannot, prior to the payment, reliably associate a payment (within the meaning of § 1.1441–1(b)(2)(vii)) with a valid foreign simple trust or foreign grantor trust withholding certificate, it cannot reliably determine how much of the payment relates to valid documentation provided by a payee (*e.g.,* a person that is not itself a nonqualified intermediary, flow-through entity, or U.S. branch) associated with the foreign simple trust or foreign grantor trust withholding certificate, or it does not have sufficient information to report the payment on Form 1042–S or Form 1099, if reporting is required. See § 1.1441–1(b)(2)(vii)(A) and (B). See, however, § 1.1441–1(e)(3)(iv)(C)(*2*) for when a withholding agent may reliably associate a withholdable payment with a chapter 4 withholding rate pool in lieu of obtaining documentation for each payee included in a pool (substituting the term *nonwithholding foreign trust* for the term *nonqualified intermediary*). See also § 1.1441–1(e)(3)(iv)(A) for when a withholding agent may reliably associate a payment with a chapter 4 withholding rate pool of U.S. payees.

(ii) *Reliance on claim of reduced withholding by a foreign simple trust or*

foreign grantor trust for its beneficiaries or owners. This paragraph (e)(5)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a foreign simple trust or foreign grantor trust. To the extent that a withholding agent treats a payment to a foreign simple trust or foreign grantor trust as a payment to payees other than the trust in accordance with paragraph (e)(3)(i) of this section, it may rely on a claim for reduced withholding by a beneficiary or owner if, prior to the payment, the withholding agent can reliably associate the payment (within the meaning of § 1.1441–1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from a payee or beneficial owner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or documentary evidence described in § 1.1441–6(c)(3) or (4) or in § 1.6049–5(c)(1) (for a beneficiary or owner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441–1(c)(6)), a Form W–9 described in § 1.1441–1(d) (for a beneficiary or owner claiming to be a U.S. payee), a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section, or a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees. For when the withholding agent can reliably associate the payment with a chapter 4 withholding rate pool, see paragraph (c)(3)(i) of this section. See also § 1.1441–3(a)(2) (coordinating withholding under chapter 3 when withholding under chapter 4 is applied to a withholdable payment). Unless a foreign simple trust or foreign grantor trust withholding certificate is provided for income treated as income effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each payee's portion of the payment. When making a claim for several payees, the trust may present a single foreign simple trust or foreign grantor trust withholding certificate with which the payees' certificates or other appropriate documentation are associated. Where the foreign simple trust or foreign grantor trust withholding certificate is provided for income that is treated as effectively connected with the conduct of a trade or business in the United States under paragraph (e)(5)(iii)(D) of this section, the claim may be presented without having to identify any beneficiary's or grantor's distributive share of the payment.

(iii) * * *

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), the employer identification number, if required, of the trust, the country under the laws of which the trust is created, the chapter 4 status of the trust if required for purposes of chapter 4 or if the trust provides (or will provide) a withholding statement associated with the Form W–8 allocating a payment to a chapter 4 withholding rate pool of U.S. payees under § 1.6049–4(c)(4) with respect to the nonwithholding foreign trust's owners and beneficiaries, and the GIIN of the trust (if applicable). If a nonwithholding foreign trust provides (or will provide) a chapter 4 withholding rate pool of U.S. payees as described in the preceding sentence, the trust must certify to its chapter 4 status as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI);

* * * * *

(iv) *Withholding statement provided by a foreign simple trust or foreign grantor trust and coordination with chapter 4.* The provisions of § 1.1441–1(e)(3)(iv) (regarding a withholding statement) shall apply to a foreign simple trust or foreign grantor trust by substituting the term *foreign simple trust* or *foreign grantor trust* for the term *nonqualified intermediary,* including when a withholding statement provided by a foreign simple trust or foreign grantor trust may include a chapter 4 withholding rate pool in lieu of information with respect to each owner or beneficiary that is a payee of a payment.

(v) *Withholding foreign trusts.* The IRS may enter into a withholding agreement with a foreign trust to treat the trust or estate as a withholding foreign trust. Such a withholding agreement shall generally follow the same principles as a withholding agreement with a withholding foreign partnership under paragraph (c)(2)(ii) of this section. A withholding agent may treat a payment to a withholding foreign trust in the same manner the withholding agent would treat a payment (including a withholdable payment) to a withholding foreign partnership. See § 1.1441–1(e)(5)(ii)(D). For a withholding foreign trust that is an FFI, the withholding agreement will require the withholding foreign trust to assume the requirements of either a participating FFI, registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable IGA that is subject to due diligence and reporting requirements with respect to its U.S. accounts similar to those applicable to a registered deemed-compliant FFI under § 1.1471–5(f)(1).

(6) * * *

(ii) *Determination of status as U.S. or foreign trust or estate in the absence of documentation.* In the absence of valid documentation that establishes the U.S. status of a trust or estate under paragraph (b)(1) of this section and of documentation that establishes the foreign status of a trust or estate under paragraph (e)(4) or (e)(5)(iii) of this section, the withholding agent shall determine the classification of the payee based upon the presumptions set forth in § 1.1441–1(b)(3)(ii). If, based upon those presumptions, the withholding agent classifies the payee as a trust or estate, the withholding agent shall apply the presumptions set forth in § 1.1441–1(b)(3)(iii)(A)(*1*) (applied by substituting the term *trust* for the term *exempt recipient*) to determine whether the trust or estate is a U.S. person or foreign person. An undocumented payee presumed to be a foreign trust shall be presumed to be a foreign complex trust. If a withholding agent has documentary evidence that establishes that an entity is a foreign trust, but the withholding agent cannot determine whether the foreign trust is a complex trust, a simple trust, or foreign grantor trust, the withholding agent shall presume that the trust is a foreign complex trust. Notwithstanding the preceding sentence, in the case of a foreign trust with a settlor that is a U.S. person 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.

* * * * *

(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) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. 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.)

§ 1.1441–5T [Removed]

■ **Par. 14.** Section 1.1441–5T is removed.

■ **Par. 15.** Section 1.1441–6 is amended by revising paragraphs (a), (b)(1), (b)(2)(i) and (iv), (c)(1), (c)(5)(i), and (i) to read as follows:

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

(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 such that 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 a reduced rate of withholding under an income tax treaty in the case of compensation from personal services and § 1.1441–4(c)(1) for rules regarding claims of a reduced rate of withholding under an income tax treaty in the case of scholarship and fellowship income.

(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 satisfied. See section 894 and the regulations under section 894 to determine whether a resident of a treaty country derives the income. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with a beneficial owner withholding certificate, as described in § 1.1441–1(e)(2), that contains the information necessary to support the claim, or, in the case of a payment of income described in paragraph (c)(2) of this section made outside the United States with respect to an offshore obligation, documentary evidence described in paragraphs (c)(3), (c)(4), and (c)(5) of this section. See § 1.6049–5(e) for the definition of payments made outside the United States and § 1.6049–5(c)(1) for the definition of an offshore obligation. For purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) contains information necessary to support the claim for a treaty benefit only if it includes the beneficial owner's taxpayer identifying number (except as otherwise provided in paragraph (c)(1) and (g) of this section, or the beneficial owner provides its foreign tax identifying number issued by its country of residence and such country has with the United States an income tax treaty or information exchange agreement in effect), includes the representations that the beneficial owner derives the income under section 894 and the regulations under section 894, if required, and with regard to a beneficial owner that is an entity, includes a statement that the entity meets the limitation on benefits provisions of the treaty, if any. For claims for treaty benefits for scholarship and fellowship income, the beneficial owner withholding certificate must contain the beneficial owner's U.S. taxpayer identifying number (not a foreign taxpayer identifying number). The withholding certificate must also contain any other representations required by this section and any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in place of, the information and certifications described in this section. Absent actual knowledge or reason to know that the claims are unreliable or incorrect (applying the standards of knowledge in § 1.1441–7(b)), a withholding agent may rely on the claims made on a withholding certificate or on documentary evidence. A withholding agent may also rely on the information contained in a withholding statement provided under §§ 1.1441–1(e)(3)(iv) and 1.1441–5(c)(3)(iv) and (e)(5)(iv) to determine whether the appropriate statements regarding section 894 and limitation on benefits have been provided in connection with documentary evidence. The Internal Revenue Service (IRS) may apply the provisions of § 1.1441–1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. See § 1.1441–1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of § 1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

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

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

(2) *Payment to fiscally transparent entity*—(i) *In general.* If the person claiming a reduced rate of withholding under an income tax treaty is an interest holder of an entity that is considered to be fiscally transparent (as defined in the regulations under section 894) by the interest holder's jurisdiction with respect to an item of income, then, with respect to such income derived by that person through the entity, the entity shall be treated as a flow-through entity and may provide a flow-through withholding certificate with which the withholding certificate or other documentary evidence of the interest holder that supports the claim for treaty benefits is associated. In the case of a payment that is a withholdable payment, see, however, § 1.1471–3(c) for determining the payee of the payment and §§ 1.1471–2(a) and 1472–1(b) for when withholding at source may apply to the payment based on the status of the payee notwithstanding a claim for treaty benefits made under this paragraph (b)(2) by an interest holder in the payee. In such a case, the interest holder may file a claim for refund of the overwithheld amount of tax. For purposes of this paragraph (b)(2)(i), interest holders do not include any direct or indirect interest holders that are themselves treated as fiscally transparent entities with respect to that income by the interest holder's jurisdiction. See § 1.1441–1(c)(23) and (e)(3)(i) for the definition of flow-through entity and flow-through withholding certificate. The entity may provide a beneficial owner withholding

certificate, or beneficial owner documentation, with respect to any remaining portion of the income to the extent the entity is receiving income and is not treated as fiscally transparent by its own jurisdiction. Further, the entity may claim a reduced rate of withholding with respect to the portion of a payment for which it is not treated as fiscally transparent if it meets all the requirements to make such a claim and, in the case of treaty benefits, it provides the documentation required by paragraph (b)(1) of this section. If dual claims, as described in paragraph (b)(2)(iii) of this section, are made, multiple withholding certificates may have to be furnished. Multiple withholding certificates may also have to be furnished if the entity receives income for which a reduction of withholding is claimed under a provision of the Internal Revenue Code (*e.g.,* portfolio interest) and income for which a reduction of withholding is claimed under an income tax treaty.

* * * * *

(iv) *Examples.* The following examples illustrate the rules of paragraph (b)(2) of this section. Each of the following examples describes a payment of U.S. source royalties, which are not withholdable payments under chapter 4. See § 1.1473–1(a)(4)(iii) (describing nonfinancial payments that are not treated as withholdable payments). Thus, withholding under chapter 4 shall not apply with respect to the U.S. source royalties in any of the following examples:

Example 1. (i) *Facts.* Entity E is a business organization formed under the laws of country Y. Country Y has an income tax treaty with the United States. The treaty contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W and claims a reduced rate of withholding under the U.S.-Y tax treaty on its own behalf (rather than on behalf of its interest holders). E furnishes a beneficial owner withholding certificate described in paragraph (b)(1) of this section that represents that E is a resident of country Y (within the meaning of the U.S.-Y tax treaty), is the beneficial owner of the income, derives the income under section 894 and the regulations under section 894, and is not precluded from claiming benefits by the treaty's limitation on benefits provision.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, as described in paragraph (b)(1) of this section, W may rely on the representations made by E to apply a reduced rate of withholding.

Example 2. (i) *Facts.* The facts are the same as under *Example 1,* except that one of E's interest holders, H, is an entity organized in country Z. The U.S.-Z tax treaty reduces the rate on royalties to zero whereas the rate on royalties under the U.S.-Y tax treaty applicable to E is 5%. H is not fiscally transparent under country Z's tax law with respect to such income. H furnishes a beneficial owner withholding certificate to E that represents that H derives, within the meaning of section 894 and the regulations under section 894, its share of the royalty income paid to E as a resident of country Z, is the beneficial owner of the royalty income, and is not precluded from claiming treaty benefits by virtue of the limitation on benefits provision in the U.S.-Z treaty. E furnishes to W a flow-through withholding certificate described in § 1.1441–1(e)(3)(i) to which it attaches H's beneficial owner withholding certificate and a withholding statement for the portion of the payment that H claims as its distributive share of the royalty income. E also furnishes to W a beneficial owner withholding certificate for itself for the portion of the payment that H does not claim as its distributive share.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, as described in paragraph (b)(1) of this section, W may rely on the documentation furnished by E to treat the royalty payment to a single foreign entity (E) as derived by different residents of tax treaty countries as a result of the claims presented under different treaties. W may, at its option, grant dual treatment, that is, a reduced rate of zero percent under the U.S.-Z treaty on the portion of the royalty payment that H claims to derive as a resident of country Z and a reduced rate of 5% under the U.S.-Y treaty for the balance. However, under paragraph (b)(2)(iii) of this section, W may, at its option, treat E as the only relevant person deriving the royalty and grant benefits under the U.S.-Y treaty only.

Example 3. (i) *Facts.* E is a business organization formed under the laws of country X. Country X has an income tax treaty with the United States. E has two interest holders, H1, organized in country Y, and H2, organized in country Z. E receives from W, a U.S. withholding agent, a payment of U.S. source royalties and interest, with respect to an obligation issued before July 1, 2014, that is eligible for the portfolio interest exception under sections 871(h) and 881(c), provided W receives the appropriate beneficial owner statement required under section 871(h)(5). E is classified as a corporation under U.S. tax law principles. Country X, E's country of organization, treats E as an entity that is not fiscally transparent with respect to items of income under the regulations under section 894. Under the U.S.-X income tax treaty, royalties are subject to a 5% rate of withholding. Country Y, H1's country of organization, treats E as fiscally transparent with respect to items of income under section 894 and H1 as not fiscally transparent with respect to items of income. Under the country Y–U.S. income tax treaty, royalties are exempt from U.S. tax. Country Z, H2's country of organization, treats E as not fiscally transparent under section 894 with respect to items of income. E provides W with a flow-through beneficial owner withholding certificate with which it associates a beneficial owner withholding certificate from H1. H1's withholding certificate states that H1 is a resident of country Y, derives the royalty income under section 894, meets the applicable limitation on benefits provisions of the U.S.-Y treaty, and is the beneficial owner of the income. The withholding statement attached to E's flow-through withholding certificate allocates one-half of the royalty payment to H1. E also provides W with a beneficial owner withholding certificate for the interest income and the remaining one-half of the royalty income. The withholding certificate states that E is a resident of country X, derives the royalty income under section 894, meets the limitation on benefits provisions of the U.S.-X treaty, and is the beneficial owner of the income.

(ii) *Analysis.* Absent actual knowledge or reason to know that the claims are incorrect, as described in paragraph (b)(1), W may treat one-half of the royalty derived by E as subject to a 5% withholding rate and one-half of the royalty as derived by H1 and subject to no withholding. Further, it may treat all of the interest as being paid to E and as qualifying for the portfolio interest exception. W can, at its option, treat the entire royalty as paid to E and subject it to withholding at a 5% rate of withholding. In that case, H1 would be entitled to claim a refund with respect to its one-half of the royalty.

Example 4. [Reserved]. For further guidance, see § 1.1441–6T(b)(2)(iv) *Example 4.*

(c) *Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income*—(1) *General rule.* In the case of income described in paragraph (c)(2) of this section, a withholding agent may rely on a beneficial owner withholding certificate described in paragraph (b)(1) of this section without regard to the requirement that the withholding certificate include the beneficial owner's taxpayer identifying number. In the case of a payment of income not described in paragraph (c)(2) of this section, a withholding agent may rely on a withholding certificate that includes the beneficial owner's foreign taxpayer identifying number described in paragraph (b)(1) of this section instead of the beneficial owner's taxpayer identifying number. In the case of payments of income described in paragraph (c)(2) of this section made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)), a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section, relating to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with § 1.1441–1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of

residence or documentary evidence must be accompanied by the statements described in paragraphs (c)(5)(i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining the original, certified copy, or photocopy (microfiche, electronic scan, or similar means of electronic storage) of such documents. With respect to documentary evidence, the withholding agent must also note in its records the date on which the documents were received and reviewed. This paragraph (c)(1) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States.

* * * * *

(5) * * *

(i) [Reserved]. For further guidance, see § 1.1441–6T(c)(5)(i).

* * * * *

(i) *Effective/applicability dates*—(1) *General rule.* Except as otherwise provided in paragraph (i)(2) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014 (except for payments to which paragraph (c)(1) applies, in which case substitute March 5, 2014, for June 30, 2014), and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016. For payments made after December 31, 2001, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(2) *Dividend equivalents.* Paragraph (h) of this section applies to payments made on or after December 5, 2013.

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

■ **Par. 16.** Section 1.1441–6T is revised to read as follows:

§ 1.1441–6T Claim of reduced withholding under an income tax treaty (temporary).

(a) through (b)(1) introductory text [Reserved]. For further guidance, see § 1.1441–6(a) through (b)(1) introductory text.

(i) *Identification of limitation on benefits provisions.* In conjunction with the representation that the beneficial owner meets the limitation on benefits provision of the applicable treaty, if any, required by paragraph (b)(1) of this section, a beneficial owner withholding certificate must also identify the specific limitation on benefits provision of the article (if any, or a similar provision) of the treaty upon which the beneficial owner relies to claim the treaty benefit. A withholding agent may rely on the beneficial owner's claim regarding its reliance on a specific limitation on benefits provision absent actual knowledge that such claim is unreliable or incorrect.

(ii) *Reason to know based on existence of treaty.* For purposes of this paragraph (b)(1), a withholding agent's reason to know that a beneficial owner's claim to a reduced rate of withholding under an income tax treaty is unreliable or incorrect includes a circumstance where the beneficial owner is claiming benefits under an income tax treaty that does not exist or is not in force. A withholding agent may determine whether a tax treaty is in existence and is in force by checking the list maintained on the IRS Web site at *https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z* (or any replacement page on the IRS Web site) or in the State Department's annual Treaties in Force publication.

(b)(2)(i) through (iv) Example 3 [Reserved]. For further guidance, see § 1.1441–6(b)(2)(i) through (b)(2)(iv) Example 3.

Example 4. (i) *Facts.* Entity E is a business organization formed under the laws of country Y. Country Y has an income tax treaty with the United States that contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W. E furnishes a beneficial owner withholding certificate to W claiming a reduced rate of withholding under the U.S.-Y tax treaty. However, E's beneficial owner withholding certificate does not specifically identify the limitation on benefits provision that E satisfies.

(ii) *Analysis.* Because E's withholding certificate does not specifically identify the limitation on benefits provision under the U.S.-Y tax treaty that E satisfies as required by paragraph (b)(1)(i) of this section, W cannot rely on E's withholding certificate to apply the reduced rate of withholding claimed by E.

(c) introductory text through (c)(4) [Reserved]. For further guidance, see § 1.1441–6(c) through (c)(4).

(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 paragraph (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 and must identify the specific limitation on benefits provision of the article (if any, or a similar provision) of the treaty upon which the taxpayer relies to claim the treaty benefit.

(c)(5)(ii) through (i)(2) [Reserved]. For further guidance, see § 1.1441–6(c)(5)(ii) through (i)(2).

(3) *Effective/applicability date.* This section applies on January 6, 2017.

(j) *Expiration date.* The applicability of this section expires on December 30, 2019.

■ **Par. 17** Section 1.1441–7 is amended by:

■ 1. Revising paragraph (b), (c) and (f)(2)(ii).

■ 2. Removing paragraph (f)(3).

■ 3. Revising paragraph (g).

■ 4. Removing paragraph (h).

The revisions read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

* * * * *

(b) *Standards of knowledge*—(1) *In general.* A withholding agent must withhold at the full 30-percent rate under section 1441, 1442, or 1443(a) or at the full 4-percent rate under section 1443(b) if it has actual knowledge or reason to know that a claim of U.S. status or of a reduced rate of withholding under section 1441, 1442, or 1443 is unreliable or incorrect. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections if it fails to withhold the correct amount despite its actual knowledge or reason to know the amount required to be withheld. For purposes of the regulations under sections 1441, 1442, and 1443, a withholding agent may rely on information or certifications contained in, or associated with, a withholding certificate or other documentation furnished by or for a beneficial owner or payee unless the withholding agent has actual knowledge or reason to know that the information or certifications are incorrect or unreliable and, if based on such knowledge or reason to know, it should withhold (under chapter 3 of the Code or another withholding provision of the Code) an amount greater than would be the case if it relied on the information or certifications, or it should report (under chapter 3 of the Code or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the information or certifications. See § 1.1441–1(e)(4)(viii) for applicable reliance rules. A withholding agent that has received notification by the Internal Revenue Service (IRS) that a claim of U.S. status or of a reduced rate is incorrect has actual knowledge beginning on the date that is 30 calendar days after the date the notice is received. A withholding agent that fails to act in accordance with

the presumptions set forth in §§ 1.1441–1(b)(3), 1.1441–4(a), 1.1441–5 (d) and (e), or 1.1441–9(b)(3) may also be liable for tax, interest, and penalties. See § 1.1441–1(b)(3)(ix) and (7). In the case of a withholding agent making a withholdable payment to a payee that the withholding agent is required to treat as a foreign entity, see § 1.1471–3(e) for standards of knowledge and §§ 1.1471–2 and 1.1472–1(b) for withholding that may apply under chapter 4. A withholding agent is allowed to apply the rules under paragraphs (b)(5) and (b)(8) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2013, to accounts opened, and obligations entered into, by an entity on or after July 1, 2014, and before January 1, 2015.

(2) *Reason to know.* A withholding agent shall be considered to have reason to know if its knowledge of relevant facts or of statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the chapter 3 claims made. For an obligation other than a preexisting obligation, a withholding agent will have reason to know that a chapter 3 claim made by the holder of the obligation (account holder) is unreliable or incorrect if any information contained in its account opening files or other files pertaining to the obligation (account information), including documentation collected for purposes of AML due diligence (as defined under § 1.1471–1(b)(4)), conflicts with the account holder's claim. A withholding agent will not, however, be considered to have reason to know that a person's chapter 3 claim is unreliable or incorrect based on documentation collected for AML due diligence until the date that is 30 days after the obligation is executed (or the account is opened for an obligation that is an account with a financial institution).

(3) *Financial institutions—limits on reason to know*—(i) *In general.* For purposes of this paragraph (b)(3) and paragraphs (b)(4) through (10) of this section, the terms withholding certificate, documentary evidence, and documentation are defined in § 1.1441–1(c)(16), (17), and (18). Except as otherwise provided in paragraphs (b)(4) through (9) of this section, a withholding agent that is a financial institution under § 1.1471–5(e), an insurance company (without regard to whether such company is a specified insurance company), or a broker or dealer in securities that maintains or opens an account for a beneficial owner (a direct account holder) has reason to know that documentation provided by the direct account holder is unreliable or incorrect only if one or more of the circumstances described in paragraphs (b)(4) through (9) of this section exist. If a direct account holder has provided documentation that is unreliable or incorrect under the rules of paragraph (b)(4) through (9) of this section, the withholding agent may require new documentation. Alternatively, the withholding agent may rely on the documentation originally provided if the rules of paragraphs (b)(4) through (9) of this section permit such reliance based on additional statements and documentation obtained by the withholding agent from the beneficial owner. Paragraph (b)(10) of this section provides rules regarding reason to know for withholding agents that receive beneficial owner documentation from persons (indirect account holders) that have an account relationship with, or an ownership interest in, a direct account holder of the withholding agent. Paragraph (b)(11) of this section provides limitations on a withholding agent's reason to know for multiple obligations held by the same person. Paragraph (b)(12) of this section defines a reasonable explanation provided by an individual with respect to the individual's claim of foreign status. For rules regarding reliance on Form W–9, see § 31.3406(h)–3(e)(2) of this chapter. For payments that are withholdable payments, see § 1.1471–3(e)(3) and (4) for additional rules regarding a withholding agent's reason to know with respect to a payee's claim of chapter 4 status and § 1.1471–3(f) for presumption rules that apply when the claim of chapter 4 status is unreliable or incorrect.

(ii) *Limits on reason to know for preexisting obligations.* With respect to a preexisting obligation, a withholding agent that has documented the foreign status of the direct account holder for purposes of chapter 3 or chapter 61 before July 1, 2014, may continue to rely on such documentation without regard to a U.S. phone number or U.S. place of birth. If, however, the withholding agent reviews documentation for an individual account holder claiming foreign status that contains a U.S. place of birth (as described in paragraph (b)(5)(ii) of this section) or if the withholding agent is notified of a change in circumstances under the criteria of paragraphs (b)(5) and (8) of this section (as effective on July 1, 2014), the obligation will be treated as having experienced a change in circumstances under § 1.1441–1(e)(4)(ii)(D) as of the date that the withholding agent reviews the documentation or receives the notification, and the withholding agent will then have reason to know that the documentation is unreliable or incorrect. With respect to an obligation held by an entity, a withholding agent is not required to treat the additional U.S. indicia described in this paragraph (b) as a change in circumstances under § 1.1441–1(e)(4)(ii)(D) before January 1, 2015. See § 1.1441–1(b)(3)(iv) for the grace period following a change in circumstances. For purposes of this rule, a direct account holder will be considered documented prior to July 1, 2014, without regard to whether the withholding agent obtains renewal documentation for the account holder on or after July 1, 2014, pursuant to the requirements of § 1.1441–1(e)(4)(ii)(A).

(4) *Rules applicable to withholding certificates*—(i) *In general.* A withholding agent has reason to know that a beneficial owner withholding certificate provided by a direct account holder is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the direct account holder, the withholding certificate contains any information that is inconsistent with the direct account holder's claim, the withholding agent has account information that is inconsistent with the direct account holder's claim, or the withholding certificate lacks information necessary to establish entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder's status as a foreign person or resident of a treaty country a withholding certificate shall be considered unreliable or inconsistent with an account holder's claims only if it is not reliable under the rules of paragraphs (b)(5) and (6) of this section. A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent.

(ii) *Examples.* The rules of paragraph (b)(4) of this section are illustrated by the following examples:

Example 1. F, a foreign person that has a direct account relationship with USB, a bank that is a U.S. person, provides USB with a beneficial owner withholding certificate for the purpose of claiming a reduced rate of withholding on U.S. source dividends (which is a withholdable payment). F resides in a treaty country that has a limitation on benefits provision in its income tax treaty with the United States. The withholding certificate includes a certification of F's status for chapter 4 purposes to except the payment from withholding under chapter 4, but does not contain a statement regarding

limitation on benefits or deriving the income under section 894 as required by § 1.1441–6(b)(1). USB cannot rely on the withholding certificate to grant a reduced rate of withholding for chapter 3 purposes because it is incomplete with respect to the claim made by F.

Example 2. F, a foreign person and entity that has a direct account relationship with USB, a broker that is a U.S. person, provides USB with a withholding certificate for the purpose of claiming the portfolio interest exception under section 881(c) with respect to interest paid on an obligation issued before July 1, 2014. The payment of interest is not a withholdable payment under § 1.1471–2(b) (referring to payments made with respect to grandfathered obligations), and, therefore, withholding does not apply to the payment under chapter 4. See § 1.1441–3(c)(4)(i) for rules coordinating withholding under chapters 3 and 4. F indicates on its withholding certificate, however, that it is a partnership. USB may not treat F as a beneficial owner of the interest for purposes of the portfolio interest exception because F has indicated on its withholding certificate that it is a foreign partnership, and such entity classification is inconsistent with its claim as a beneficial owner.

(5) *Withholding certificate—establishment of foreign status.* A withholding agent has reason to know that a beneficial owner withholding certificate (as defined in § 1.1441–1(e)(2), but excluding a Form W–8ECI) provided by a direct account holder is unreliable or incorrect for purposes of establishing the account holder's status as a foreign person as set forth in paragraphs (b)(5)(i) through (iii) of this section.

(i) *Classification of U.S. status, U.S. address, or U.S. telephone number.* A withholding certificate is unreliable or incorrect if the withholding agent has classified the person as a U.S. person in its account information, the withholding certificate has a current permanent residence address (as defined in § 1.1441–1(e)(2)(ii)) in the United States, the withholding certificate has a current mailing address in the United States, the withholding agent has a current residence or mailing address as part of its account information that is an address in the United States, or the direct account holder notifies the withholding agent of a new residence or mailing address in the United States (whether or not provided on a withholding certificate). A withholding agent also has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding agent has a current telephone number for the account holder in the United States and has no telephone number for the account holder outside of the United States. When any of the foregoing U.S. indicia are present, a withholding agent may nevertheless rely on the beneficial owner withholding certificate to establish the account holder's foreign status if it may do so under the provisions of paragraph (b)(5)(i)(A) or (B) of this section.

(A) A withholding agent may treat a direct account holder as a foreign person if the beneficial owner withholding certificate has been provided by an individual and—

(*1*) The withholding agent has in its possession or obtains documentary evidence establishing foreign status (as described in § 1.1471–3(c)(5)(i)) that does not contain a U.S. address and the individual provides the withholding agent with a reasonable explanation, in writing, supporting the claim of foreign status (as defined in paragraph (b)(12) of this section);

(*2*) For a payment made outside the U.S. with respect to an offshore obligation (as described in § 1.6049–5(c)(1)), the withholding agent has in its possession or obtains documentary evidence establishing foreign status (as described in § 1.1471–3(c)(5)(i)), that does not contain a U.S. address;

(*3*) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049–5(c)(1)), the withholding agent classifies the individual as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States; or

(*4*) For a case in which the withholding agent classified the account holder as a U.S. person in its account information, the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States.

(B) A withholding agent may treat a direct account holder as a foreign person if the beneficial owner withholding certificate has been provided by an entity that the withholding agent does not know, or does not have reason to know, is a flow-through entity and—

(*1*) The withholding agent has in its possession or obtains documentation establishing foreign status that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(*2*) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049–5(c)(1)), the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report a payment made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(ii) *U.S. place of birth.* A withholding agent has reason to know that a withholding certificate claiming foreign status provided by a direct account holder that is an individual is unreliable or incorrect if the withholding agent has, either on accompanying documentation or as part of its account information, an unambiguous indication of a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. place of birth, if the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and either a copy of the individual's Certificate of Loss of Nationality of the United States or a reasonable written explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(iii) *Standing instructions with respect to offshore obligations.* A beneficial owner withholding certificate is unreliable or incorrect if it is provided with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)) of a direct account holder that has provided standing instructions to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the account holder as a foreign person, however, if the account holder provides either a reasonable explanation in writing that supports its foreign status or documentary evidence establishing foreign status described in § 1.1471–3(c)(5)(i).

(6) *Withholding certificate—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that a withholding certificate (other than Form W–9) provided by a direct account holder is unreliable or incorrect for purposes of establishing that the account holder is a resident of a country with which the United States

has an income tax treaty if it is described in paragraphs (b)(6)(i) through (iii) of this section.

(i) *Permanent residence address.* A beneficial owner withholding certificate is unreliable or incorrect if the permanent residence address on the beneficial owner withholding certificate is not in the country whose treaty is invoked, or the direct account holder notifies the withholding agent of a new permanent residence address that is not in the treaty country. A withholding agent may, however, treat a direct account holder as entitled to a reduced rate of withholding under an income tax treaty if the account holder provides a reasonable explanation for the permanent residence address outside the treaty country (*e.g.,* the address is the address of a branch of the beneficial owner located outside the treaty country in which the entity is a resident) or the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i) that establishes residency in a treaty country.

(ii) *Mailing address.* A beneficial owner withholding certificate is unreliable or incorrect if the permanent residence address on the withholding certificate is in the applicable treaty country but the withholding certificate contains a mailing address outside the treaty country or the withholding agent has a current mailing address as part of its account information for the direct account holder that is outside the treaty country. A mailing address that is a P.O. Box, in-care-of address, or address at a financial institution (if the financial institution is not a beneficial owner) shall not preclude a withholding agent from treating the account holder as a resident of a treaty country if such address is in the treaty country. If a withholding agent has a mailing address (whether or not contained on the withholding certificate) outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if—

(A) The withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i) supporting the account holder's claim of residence in the applicable treaty country (and the additional documentation does not contain an address outside the treaty country);

(B) The withholding agent has in its possession, or obtains, documentation that establishes that the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires);

(C) The withholding agent knows that the address outside the applicable treaty country (other than a P.O. box, or in-care-of address) is a branch of the account holder that is an entity that is a resident of the applicable treaty country; or

(D) The withholding agent obtains a written statement from the direct account holder that reasonably establishes entitlement to treaty benefits.

(iii) *Standing instructions.* A beneficial owner withholding certificate is unreliable or incorrect to establish entitlement to a reduced rate of withholding under an income tax treaty if the direct account holder has standing instructions to pay amounts directing the withholding agent to pay amounts from its account to an address or an account outside the treaty country unless the account holder provides a reasonable explanation, in writing, or the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i) establishing the account holder's residence in the applicable treaty country.

(7) *Documentary evidence.* A withholding agent shall not treat documentary evidence provided by a direct account holder as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by a direct account holder that is a natural person and the photograph or signature on the documentary evidence, if any, does not match the appearance or signature of the person presenting the document. A withholding agent shall not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules of §§ 1.1441–1(b)(3), 1.1441–5(d) and (e)(6), and 1.6049–5(d) if the documentary evidence contains information that is inconsistent with the direct account holder's claim of a reduced rate of withholding, the withholding agent has other account information that is inconsistent with the direct account holder's claim, or the documentary evidence lacks information necessary to establish entitlement to a reduced rate of withholding. For example, if a direct account holder provides documentary evidence to claim treaty benefits and the documentary evidence establishes the direct account holder's status as a foreign person and a resident of a treaty country, but the account holder fails to provide the treaty statements required by § 1.1441–6(c)(5), the documentary evidence does not establish the direct account holder's entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder's status as a foreign person or resident of a country with which the United States has an income tax treaty, documentary evidence shall be considered unreliable or incorrect only if it is not reliable under the rules of paragraph (b)(8) or (9) of this section.

(8) *Documentary evidence—establishment of foreign status.* A withholding agent has reason to know that documentary evidence is unreliable or incorrect for purposes of establishing the direct account holder's status as a foreign person if the documentary evidence is described in paragraphs (b)(8)(i), (ii), (iii), or (iv) of this section.

(i) *Documentary evidence received prior to January 1, 2001.* A withholding agent shall not treat documentary evidence provided by a direct account holder before January 1, 2001, as valid for purposes of establishing the account holder's status as a foreign person if it has actual knowledge that the account holder is a U.S. person or if it has a mailing or residence address for the account holder in the United States. If a withholding agent has an address for the direct account holder in the United States, the withholding agent may nevertheless treat the account holder as a foreign person if it can so treat the account holder under the rules of paragraph (b)(8)(ii) of this section. See, however, paragraph (b)(3)(ii) of this section regarding changes in circumstances with respect to preexisting obligations.

(ii) *Documentary evidence received after December 31, 2000.* A withholding agent shall not treat documentary evidence provided by an account holder after December 31, 2000, as valid for purposes of establishing the direct account holder's foreign status if the withholding agent does not have a permanent residence address for the account holder. Documentary evidence is also unreliable or incorrect to establish a direct account holder's status as a foreign person if the withholding agent has classified the account holder as a U.S. person in its account information, if the withholding agent has a current mailing or permanent residence address (whether or not on the documentation) for the direct account holder in the United States, the direct account holder notifies the withholding agent of a new residence or mailing address in the United States, or if the withholding agent has a current

telephone number for the account holder in the United States and has no telephone number for the account holder outside of the United States. Notwithstanding the foregoing, a withholding agent may rely on documentary evidence as establishing the direct account holder's foreign status if it may do so under the provisions of paragraph (b)(8)(ii)(A) or (B) of this section.

(A) *Treatment of individual's foreign status.* A withholding agent may treat a direct account holder that is an individual as a foreign person even if it has any of the U.S. indicia described in this paragraph for the account holder if—

(*1*) The withholding agent has in its possession or obtains additional documentary evidence supporting the claim of foreign status (described in § 1.1471–3(c)(5)(i)) that does not contain a U.S. address and a reasonable explanation in writing supporting the account holder's foreign status;

(*2*) The withholding agent obtains a valid beneficial owner withholding certificate on Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides a reasonable explanation in writing supporting the account holder's foreign status); or

(*3*) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049–5(c)(1)), the withholding agent classifies the individual as a resident of the country in which the obligation is maintained, the withholding agent is required to report a payment made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(B) *Presumption of entity's foreign status.* A withholding agent may treat a direct account holder that is an entity (other than a flow-through entity) as a foreign person even if it has any of the U.S. indicia described in this paragraph for the account holder in the United States if—

(*1*) The withholding agent has in its possession or obtains documentary evidence establishing foreign status that substantiates that the entity is actually organized or created under the laws of a foreign country;

(*2*) The withholding agent obtains a valid beneficial owner withholding certificate on Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides additional documentary evidence sufficient to establish the account holder's foreign status); or

(*3*) For a payment made with respect to an offshore obligation (with offshore obligation defined as in § 1.6049–5(c)(1)), the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report a payment made to the entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

(iii) *U.S. place of birth.* A withholding agent has reason to know that documentary evidence provided by a direct account holder to support an individual's foreign status is unreliable or incorrect if the withholding agent has, either on the documentary evidence or as part of its account information, an unambiguous indication of a place of birth for the individual in the United States. A withholding agent may treat the individual as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and a copy of the individual's Certificate of Loss of Nationality of the United States. Alternatively, a withholding agent may treat the individual as a foreign person if the withholding agent obtains a valid beneficial owner withholding certificate on Form W–8 from the individual that establishes the account holder's foreign status, documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States, and a reasonable written explanation of the individual's renunciation of U.S. citizenship or the reason the individual did not obtain U.S. citizenship at birth.

(iv) *Standing instructions with respect to offshore obligations.* Documentary evidence is unreliable or incorrect if it is provided with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)) of a direct account holder that has provided the withholding agent with standing instructions to pay amounts to an address or an account maintained in the United States. The withholding agent may treat the direct account holder as a foreign person, however, if the account holder provides either a reasonable explanation in writing that supports its foreign status or a valid beneficial owner withholding certificate claiming foreign status.

(9) *Documentary evidence—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that documentary evidence is unreliable or incorrect for purposes of establishing that a direct account holder is a resident of a country with which the United States has an income tax treaty if it is described in paragraph (b)(9)(i) or (ii) of this section.

(i) *Permanent residence address and mailing address.* Documentary evidence is unreliable or incorrect if the withholding agent has a current mailing or current permanent residence address for the direct account holder (whether or not on the documentary evidence) that is outside the applicable treaty country, or the withholding agent has no permanent residence address for the account holder. If a withholding agent has a current mailing or current permanent residence address for the direct account holder outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if the withholding agent—

(A) Has in its possession or obtains additional documentary evidence described in § 1.1471–3(c)(5)(i) supporting the direct account holder's claim of residence in the applicable treaty country (and the documentary evidence does not contain an address outside the applicable treaty country, a P.O. box, an in-care-of address, or the address of a financial institution);

(B) Has in its possession or obtains documentary evidence described in § 1.1471–3(c)(5)(i) that establishes the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires); or

(C) Obtains a valid beneficial owner withholding certificate on Form W–8 that contains a permanent residence address and a mailing address in the applicable treaty country.

(ii) *Standing instructions.* Documentary evidence is unreliable or incorrect if the direct account holder has provided the withholding agent with standing instructions to pay amounts to an address or an account maintained outside the treaty country

unless the direct account holder provides a reasonable explanation, in writing, establishing the direct account holder's residence in the applicable treaty country, or a valid beneficial owner withholding certificate that contains a permanent residence address and a mailing address in the applicable treaty country.

(10) *Indirect account holders.* A withholding agent that receives documentation from a payee through a nonqualified intermediary, a flow-through entity, or a U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person) has reason to know that the documentation is unreliable or incorrect if a reasonably prudent person in the position of a withholding agent would question the claims made. This standard requires, but is not limited to, a withholding agent's compliance with the rules of paragraphs (b)(10)(i) through (iv).

(i) The withholding agent must review the withholding statement described in § 1.1441–1(e)(3)(iv) and may not rely on information in the statement to the extent the information does not support the claims made for any payee. For this purpose, a withholding agent may not treat a payee as a foreign person if an address in the United States is provided for such payee and may not treat a person as a resident of a country with which the United States has an income tax treaty if the address for that person is outside the applicable treaty country. Notwithstanding a U.S. address or an address outside a treaty country, the withholding agent may treat a payee as a foreign person or a foreign person as a resident of a treaty country if the withholding statement is accompanied by a valid withholding certificate and documentary evidence (as described in § 1.1471–3(c)(5)(i)) or a reasonable explanation is provided, in writing, by the nonqualified intermediary, flow-through entity, or U.S. branch supporting the payee's foreign status or the foreign person's residency in a treaty country.

(ii) The withholding agent must review each withholding certificate in accordance with the requirements of paragraphs (b)(5) and (6) of this section and verify that the information on the withholding certificate is consistent with the information on the withholding statement required under § 1.1441–1(e)(3)(iv). If there is a discrepancy between the withholding certificate and the withholding statement, the withholding agent may choose to rely on the withholding certificate, if valid, and instruct the nonqualified intermediary, flow-through entity, or U.S. branch to correct the withholding statement or apply the presumption rules of §§ 1.1441–1(b), 1.1441–5(d) and (e)(6), 1.6049–5(d), and 1.1471–3(f) (for a withholdable payment for chapter 4 purposes) to the payment allocable to the payee who provided the withholding certificate. If the withholding agent chooses to rely upon the withholding certificate, the withholding agent is required to instruct the intermediary or flow-through entity to correct the withholding statement and confirm that the intermediary or flow-through entity does not know or have reason to know that the withholding certificate is unreliable or inaccurate.

(iii) The withholding agent must review the documentary evidence provided by the nonqualified intermediary, flow-through entity, or U.S. branch to determine that there is no obvious indication that the payee is a U.S. non-exempt recipient or that the documentary evidence does not establish the identity of the person who provided the documentation (*e.g.,* the documentary evidence does not appear to be an identification document).

(iv) [Reserved]. For further guidance, see § 1.1441–7T(b)(10)(iv).

(11) *Limits on reason to know for multiple obligations belonging to a single person.* A withholding agent that maintains multiple obligations for a single person will have reason to know that a claim of foreign status for the person is inaccurate based on account information for another obligation held by the person only to the extent that—

(i) The withholding agent's computerized systems link the obligations by reference to a data element such as client number, EIN, or foreign tax identifying number and consolidates the account information and payment information for the obligations; or

(ii) The withholding agent has treated the obligations as consolidated obligations for purposes of sharing documentation pursuant to § 1.1441–1(e)(4)(ix).

(12) *Reasonable explanation supporting claim of foreign status.* A reasonable explanation supporting an individual's claim of foreign status for purposes of paragraphs (b)(5) and (8) of this section means a written statement prepared by the individual or the individual's completion of a checklist provided by the withholding agent, stating that the individual meets the requirements of one of paragraphs (b)(12)(i) through (iv) of this section.

(i) The individual certifies that he or she—

(A) Is a student at a U.S. educational institution and holds the appropriate visa;

(B) Is a teacher, trainee, or intern at a U.S. educational institution or a participant in an educational or cultural exchange visitor program, and holds the appropriate visa;

(C) Is a foreign individual assigned to a diplomatic post or a position in a consulate, embassy, or international organization in the United States; or

(D) Is a spouse or unmarried child under the age of 21 years of one of the persons described in paragraphs (b)(12)(i)(A) through (C) of this section;

(ii) The individual provides information demonstrating that he or she has not met the substantial presence test set forth in § 301.7701(b)–1(c) of this chapter (*e.g.,* a written statement indicating the number of days present in the United States during the three-year period that includes the current year);

(iii) The individual certifies that he or she meets the closer connection exception described in § 301.7701(b)–2, states the country to which the individual has a closer connection, and demonstrates how that closer connection has been established; or

(iv) With respect a payment entitled to a reduced rate of tax under a U.S. income tax treaty, the individual certifies that he or she is treated as a resident of a country other than the United States and is not treated as a U.S. resident or U.S. citizen for purposes of that income tax treaty.

(13) *Additional guidance.* The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence is unreliable or incorrect in addition to the circumstances described in paragraph (b) of this section to establish an account holder's status as a foreign person or a beneficial owner entitled to a reduced rate of withholding in published guidance (see § 601.601(d)(2) of this chapter).

(c) *Agent*—(1) *In general.* A withholding agent may authorize an agent to fulfill its obligations under chapter 3 if the requirements of paragraph (c)(2) of this section are satisfied. The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts of income subject to withholding, and the deposit of tax withheld) are imputed to the withholding agent on whose behalf it is acting.

(2) *Authorized agent.* An agent is an authorized agent only if—

(i) There is a written agreement between the withholding agent and the person acting as agent that clearly provides which obligations under chapter 3 that the agent is authorized to fulfill;

(ii) A Form 8655, ''Reporting Agent Authorization,'' is filed with the IRS by a withholding agent if its agent (including any sub-agent) acts as a reporting agent for filing Form 1042 on behalf of the withholding agent and the agent (or sub-agent) identifies itself (instead of the withholding agent) as the filer on the Form 1042;

(iii) Books and records and relevant personnel of the agent (including any sub-agent) are available to the withholding agent (on a continuous basis, including after termination of the relationship) in order to evaluate the withholding agent's compliance with the provisions of chapters 3, 4, and 61 of the Code, section 3406, and the regulations under those provisions; and

(iv) The U.S. withholding agent remains fully liable for the acts of its agent (or for any sub-agent) and does not assert any of the defenses that may otherwise be available, including under common law principles of agency in order to avoid tax liability under the Code.

(3) *Liability of withholding agent acting through an agent.* An authorized agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 3 of the Code and the regulations thereunder. See the instructions to Form 1042–S for the manner for filing the form when an authorized agent acts on behalf of a withholding agent. Except as otherwise provided in the QI, WP, and WT agreements, an authorized agent does not benefit from the special procedures or exceptions that may apply to a QI, WP, or WT. A withholding agent acting through an authorized agent is liable for any failure of the agent, such as failure to withhold an amount or make payment of tax, in the same manner and to the same extent as if the agent's failure had been the failure of the withholding agent. For this purpose, the agent's actual knowledge or reason to know shall be imputed to the withholding agent. The withholding agent's liability shall exist irrespective of the fact that the authorized agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of the regulations under section 1441, 1442, or 1443. However, the same tax, interest, or penalties shall not be collected more than once.

* * * * *

(f) * * *

(2) * * *

(ii) *Examples.* The following examples illustrate the operation of paragraph (d)(2) of this section. Each example assumes that withholding under chapter 4 does not apply.

Example 1. (i) DS is a U.S. subsidiary of FP, a corporation organized in Country N, a country that does not have an income tax treaty with the United States. FS is a special purpose subsidiary of FP that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. FS is capitalized with $10,000,000 in debt from BK, a Country N bank, and $1,000,000 in capital from FS.

(ii) On May 1, 1995, C, a U.S. person, purchases an automobile from DS in return for an installment note. On July 1, 1995, DS sells a number of installment notes, including C's, to FS in exchange for $10,000,000. DS continues to service the installment notes for FS, and C is not notified of the sale of its obligation and continues to make payments to DS. But for the withholding tax on payments of interest by DS to BK, DS would have borrowed directly from BK, pledging the installment notes as collateral.

(iii) The C installment note is a financing transaction, whether held by DS or by FS, and the FS note held by BK also is a financing transaction. After FS purchases the installment note, and during the time the installment note is held by FS, the transactions constitute a financing arrangement, within the meaning of § 1.881–3(a)(2)(i). BK is the financing entity, FS is the intermediate entity, and C is the financed entity. Because the participation of FS in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, FS is a conduit entity.

(iv) Because C does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), C is not required to withhold tax under section 1441. However, DS, who knows that FS's participation in the financing arrangement is pursuant to a tax avoidance plan and is a withholding agent for purposes of section 1441, is not relieved of its withholding responsibilities.

Example 2. Assume the same facts as in *Example 1* except that C receives a new payment booklet on which DS is described as ''agent.'' Although C may deduce that its installment note has been sold, without more C has no reason to know of the existence of a financing arrangement. Accordingly, C is not liable for failure to withhold, although DS still is not relieved of its withholding responsibilities.

Example 3. (i) DC is a U.S. corporation that is in the process of negotiating a loan of $10,000,000 from BK1, a bank located in Country N, a country that does not have an income tax treaty with the United States. Before the loan agreement is signed, DC's tax lawyers point out that interest on the loan would not be subject to withholding tax if the loan were made by BK2, a subsidiary of BK1 that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. BK1 makes a loan to BK2 to enable BK2 to make the loan to DC. Without the loan from BK1 to BK2, BK2 would not have been able to make the loan to DC.

(ii) The loan from BK1 to BK2 and the loan from BK2 to DC are both financing transactions and together constitute a financing arrangement within the meaning of § 1.881–3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there is a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC is a party to the tax avoidance plan (and accordingly knows of its existence), DC must withhold tax under section 1441. If DC does not withhold tax on its payment of interest, BK2, a party to the plan and a withholding agent for purposes of section 1441, must withhold tax as required by section 1441.

Example 4. (i) DC is a U.S. corporation that has a long-standing banking relationship with BK2, a U.S. subsidiary of BK1, a bank incorporated in Country N, a country that does not have an income tax treaty with the United States. DC has borrowed amounts of as much as $75,000,000 from BK2 in the past. On January 1, 1995, DC asks to borrow $50,000,000 from BK2. BK2 does not have the funds available to make a loan of that size. BK2 considers asking BK1 to enter into a loan with DC but rejects this possibility because of the additional withholding tax that would be incurred. Accordingly, BK2 borrows the necessary amount from BK1 with the intention of on-lending to DC. BK1 does not make the loan directly to DC because of the withholding tax that would apply to payments of interest from DC to BK1. DC does not negotiate with BK1 and has no reason to know that BK1 was the source of the loan.

(ii) The loan from BK2 to DC and the loan from BK1 to BK2 are both financing transactions and together constitute a financing arrangement within the meaning of § 1.881–3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. The participation of BK2 in the financing arrangement reduces the tax imposed by section 881. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), DC is not required to withhold tax under section 1441. However, BK2, who is also a withholding agent under section 1441 and who knows that the financing arrangement is a conduit financing

arrangement, is not relieved of its withholding responsibilities.

(g) *Effective/applicability date*—(1) Except as otherwise provided in paragraph (a)(4) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. 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.)

(2) [Reserved]. For further guidance, see § 1.1441–7T(g)(2).

■ **Par. 18.** Section 1.1441–7T is revised to read as follows:

§ 1.1441–7T General provisions relating to withholding agents (temporary).

(a) through (b)(10)(iii) [Reserved]. For further guidance, see § 1.1441–7(a) through (b)(10)(iii).

(iv) If the beneficial owner is claiming a reduced rate of withholding under an income tax treaty, the rules of § 1.1441–6(b)(1)(ii) also apply to determine whether the withholding agent has reason to know that a claim for treaty benefits is unreliable or incorrect.

(b)(11) through (g)(1) [Reserved]. For further guidance, see § 1.1441–7(b)(11) through (g)(1).

(2) *Effective/applicability date.* This section applies on January 6, 2017.

(h) *Expiration date.* The applicability of this section expires on December 30, 2019.

■ **Par. 19.** Section 1.1461–1 is amended by:

■ 1. Revising paragraphs (b)(1), (c)(1)(i) and (ii), (c)(2)(ii)(E), (c)(2)(ii)(H) and (I), (c)(3)(i) and (iii), (c)(4)(i), (c)(4)(ii)(A), (c)(4)(iv) and (v), (c)(5), and (i) to read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

* * * * *

(b) *Income tax return*—(1) *General rule.* A withholding agent shall make an income tax return on Form 1042 (or such other form as the IRS may prescribe) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042–S (or such other form as the IRS may prescribe) under paragraph (c)(1) of this section. See section 6011 and § 1.6011–1(c). The withholding agent must file the return on or before March 15 of the calendar year following the year in which the income was paid. The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042–S for the preceding calendar year by the withholding agent, in addition to such information as is required by the form and accompanying instructions. See § 1.1474–1(c) for the requirement to show the aggregate chapter 4 reportable amounts and tax withheld on Form 1042. A single Form 1042 may be filed by a withholding agent to report amounts under chapters 3 and 4, including tax withheld. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return. A return must be filed under this paragraph (b)(1) even though no tax was required to be withheld during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable statute of limitations on assessments and collection with respect to the amounts required to be reported on the Form 1042. See section 6501 and the regulations thereunder for the applicable statute of limitations. Adjustments to the total amount of tax withheld, as described in § 1.1461–2, shall be stated on the return as prescribed by the form and accompanying instructions.

* * * * *

(c) *Information returns*—(1) *Filing requirement*—(i) *In general.* A withholding agent (other than an individual who is not acting in the course of a trade or business with respect to a payment) must make an information return on Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' (or such other form as the IRS may prescribe) to report the amounts subject to reporting, as defined in paragraph (c)(2) of this section, that were paid during the preceding calendar year. Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, 1443, or § 1.1446–4(a) (applicable to publicly traded partnerships required to pay tax under section 1446 on distributions) must file a Form 1042–S for the payment withheld upon whether or not that person is engaged in a trade or business and whether or not the payment is an amount subject to reporting. The reference in the previous sentence to withholding under § 1.1446–4 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7. A Form 1042–S shall be prepared for each recipient of an amount subject to reporting and for each single type of income payment. The Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 15th of the calendar year following the year in which the amount subject to reporting was paid. It shall be filed with a transmittal form as provided in the instructions to the Form 1042–S and to the transmittal form. Withholding certificates, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. Another copy of the Form 1042–S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph (c) or the instructions to the form) on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. The withholding agent must retain a copy of each Form 1042–S for the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042–S relates. A withholding agent required by this section to furnish a recipient copy of Form 1042–S may furnish such copy electronically by complying with the requirements provided in § 1.6050W–2(a)(2) through (5) applicable to statements required under section 6050W (substituting the phrase ''Form 1042–S'' for the phrases ''statement required under section 6050W'' or ''statements required by section 6050W(f)'' each place they appear). A withholding agent that meets the requirements of that section for providing electronic copies to recipients may apply these rules to payments made in calendar year 2016.

(ii) *Recipient*—(A) *Defined.* For purposes of this section, the term *recipient* means—

(*1*) A beneficial owner as defined in § 1.1441–1(c)(6), including a foreign estate or a foreign complex trust, as defined in § 1.1441–1(c)(25);

(*2*) A qualified intermediary as defined in § 1.1441–1(e)(5)(ii);

(*3*) A withholding foreign partnership as defined in § 1.1441–5(c)(2) or a withholding foreign trust under § 1.1441–5(e)(5)(v);

(*4*) A territory financial institution treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A);

(*5*) A U.S. branch that is treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A);

(*6*) A nonwithholding foreign partnership or a foreign simple trust as defined in § 1.1441–1(c)(24), but only to the extent the income is (or is treated as) effectively connected with the conduct

of a trade or business in the United States by such entity, or if the nonwithholding foreign partnership or foreign simple trust is also described in paragraph (c)(1)(ii)(A)(*9*) or (c)(1)(ii)(A)(*10*) of this section;

(*7*) A payee, as defined in § 1.1441–1(b)(2) that is presumed to be a foreign person under the presumption rules of § 1.1441–1(b)(3); 1.1441–5(d) or (e)(6), or 1.6049–5(d);

(*8*) A partner receiving a distribution from a publicly traded partnership subject to withholding under section 1446 and § 1.1446–4 on distributions of effectively connected income. This paragraph (c)(1)(ii)(A)(*8*) shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7.

(*9*) A foreign intermediary, nonwithholding foreign partnership, or nonwithholding foreign trust that is a participating FFI or registered deemed-compliant FFI with respect to a chapter 4 reporting pool of U.S. payees;

(*10*) A participating FFI or a registered deemed-compliant FFI that is a recipient of a withholdable payment described in § 1.1474–1(d)(1)(ii)(A)(*1*)(*iii*); and

(*11*) Any other person as required on Form 1042–S or the instructions to the form.

(B) *Persons that are not recipients.* A recipient does not include—

(*1*) A nonqualified intermediary, except with respect to a payment (or portion of a payment) for which a nonqualified intermediary that is an FFI is a recipient reporting as described in § 1.1474–1(d)(1)(ii)(A)(*1*)(*iii*), or if the nonqualified intermediary is also described in paragraph (c)(1)(ii)(A)(*9*) or (c)(1)(ii)(A)(*10*) of this section;

(*2*) A payee included in a chapter 3 or chapter 4 withholding rate pool;

(*3*) A flow-through entity, as defined in § 1.1441–1(c)(23) (to the extent it is receiving amounts subject to reporting other than income effectively connected with the conduct of a trade or business in the United States), that is not a recipient described in paragraphs (c)(1)(ii)(A)(9) or (c)(1)(ii)(A)(10) of this section; and

(*4*) A U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv)(A) that is not treated as a U.S. person under that section and is not a recipient described in paragraphs (c)(1)(ii)(A)(*9*) or (*10*) of this section.

(C) *Coordination with chapter 4 reporting.* See § 1.1474–1(d)(1)(ii)(A) for persons that are defined as recipients of a withholdable payment of U.S. source FDAP income for purposes of chapter 4 in addition to the persons that are recipients under this paragraph (c)(1)(ii).

(2) * * *

(ii) * * *

(E) Any item required to be reported on Form 1099, and such other forms as are prescribed pursuant to the information reporting provisions of sections 6041 through 6050W and the regulations under those sections;

* * * * *

(H) Interest (including original issue discount) paid with respect to foreign-targeted registered obligations issued before January 1, 2016, that are described in § 1.871–14(e)(2) to the extent the documentation requirements described in § 1.871–14(e)(3) and (e)(4) are required to be satisfied (taking into account the provisions of § 1.871–14(e)(4)(ii), if applicable;

(I) Interest on a foreign-targeted bearer obligation (see §§ 1.1441–1(b)(4)(i) and 1.1441–2(a)) issued before March 19, 2012;

* * * * *

(3) * * *

(i) The name, address, taxpayer identifying number of the withholding agent, and the withholding agent's status for chapter 3 purposes (based on the status codes applicable for chapter 3 purposes provided on the form);

* * * * *

(iii) For a payment not subject to withholding under chapter 4, the rate of withholding applied or the basis for exempting the payment from withholding under chapter 3, and the exemption applicable to the payment for chapter 4 purposes (based on the exemption codes provided on the form);

* * * * *

(4) *Method of reporting*—(i) *Payments by U.S. withholding agents to recipients.* A withholding agent that is a U.S. person (other than a foreign branch of a U.S. person that is a qualified intermediary as defined in § 1.1441–1(e)(5)(ii) that makes payments of amounts subject to reporting on Form 1042–S must file a separate Form 1042–S for each recipient who receives such amount. For purposes of this paragraph (c)(4), a U.S. person includes a U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv)(A) that is treated as a U.S. person. Except as may otherwise be required on Form 1042–S or the instructions to the form, only payments for which the income code, exemption code, withholding rate, and recipient code are the same may be reported on a single Form 1042–S. See paragraph (c)(4)(ii) of this section for reporting of payments made to a person that is not a recipient. See § 1.1474–1(d)(4) for additional requirements that may apply for reporting on Form 1042–S with respect to a withholdable payment that is a chapter 4 reportable amount.

(A) *Payments to beneficial owners.* If a U.S. withholding agent makes a payment directly to a beneficial owner it must complete Form 1042–S treating the beneficial owner as the recipient. Under the grace period rule of § 1.1441–1(b)(3)(iv), a U.S. withholding agent may, under certain circumstances, treat a payee as a foreign person while the withholding agent awaits a valid withholding certificate. A U.S. withholding agent who relies on the grace period rule to treat a payee as a foreign person must file a Form 1042–S to report all payments on Form 1042–S during the period that person was presumed to be foreign even if that person is later determined to be a U.S. person based on appropriate documentation or is presumed to be a U.S. person after the grace period ends. In the case of joint owners, a withholding agent may provide a single Form 1042–S made out to the owner whose status the U.S. withholding agent relied upon to determine the applicable rate of withholding. If, however, any one of the owners requests its own Form 1042–S, the withholding agent must furnish a Form 1042–S to the person who requests it. If more than one Form 1042–S is issued for a single payment, the aggregate amount paid and tax withheld that is reported on all Forms 1042–S cannot exceed the total amounts paid to joint owners and the tax withheld thereon.

(B) *Payments to a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust.* A U.S. withholding agent that makes payments to a qualified intermediary (whether or not the qualified intermediary assumes primary withholding responsibility for purposes of chapter 3 and chapter 4 of the Code), a withholding foreign partnership, or a withholding foreign trust shall complete Forms 1042–S treating the qualified intermediary, withholding foreign partnership, or withholding foreign trust as the recipient. The U.S. withholding agent must complete a separate Form 1042–S for each chapter 3 and chapter 4 withholding rate pool with respect to each qualified intermediary. A qualified intermediary that does not assume primary withholding responsibility on all payments it receives provides information regarding the proportions of income subject to a particular withholding rate (*i.e.,* a chapter 3 withholding rate pool) to the

withholding agent on a withholding statement associated with a qualified intermediary withholding certificate. In such a case, the U.S. withholding agent must complete a separate Form 1042–S for each chapter 3 and chapter 4 withholding rate pool with respect to the qualified intermediary. To the extent a qualified intermediary is required to report a payment under chapter 61, it may provide a U.S. withholding agent with information regarding withholding rate pools for U.S. non-exempt recipients (as defined under § 1.1441–1(c)(21)). Amounts paid with respect to such withholding rate pools must be reported on a Form 1099 completed for each U.S. non-exempt recipient to the extent such U.S. non-exempt recipient is subject to Form 1099 reporting and is not reported on Form 1042–S. See, however, § 1.1441–1(e)(5)(v)(C) for when a qualified intermediary may provide a chapter 4 withholding rate pool of U.S payees (in lieu of reporting such payees on a withholding statement) and for the withholding rate pools (including chapter 4 withholding rate pools) otherwise reportable on a withholding statement provided by a qualified intermediary.

(C) *Amounts paid to U.S. branches treated as U.S. persons.* A U.S. withholding agent making a payment to a U.S. branch of a foreign person (including a territory financial institution) described in § 1.1441–1(b)(2)(iv)(A) shall complete Form 1042–S as follows—

(*1*) If the branch has provided the U.S. withholding agent with a withholding certificate that evidences its agreement with the withholding agent to be treated as a U.S. person, the U.S. withholding agent files Forms 1042–S treating the U.S. branch or territory financial institution as the recipient;

(*2*) If the branch has provided the U.S. withholding agent with a withholding certificate that transmits information regarding beneficial owners, qualified intermediaries, withholding foreign partnerships, or other recipients, the U.S. withholding agent must complete a separate Form 1042–S for each recipient whose documentation is associated with the U.S. branch's or territory financial institution's withholding certificate; or

(*3*) If the U.S. withholding agent cannot reliably associate a payment with a valid withholding certificate from the U.S. branch, it shall treat the U.S. branch as the recipient and report the income as effectively connected with the conduct of a trade or business in the United States except as otherwise provided in § 1.1441–1(b)(2)(iv)(B)(*4*).

(D) *Dual Claims.* A U.S. withholding agent may make a payment to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity on the remaining portion. See § 1.1441–6(b)(2)(iii). If the claims are consistent and the withholding agent accepts the multiple claims, the withholding agent must file a separate Form 1042–S for those payments for which the entity is treated as the beneficial owner and Forms 1042–S for each of the interest holders in the entity for which the interest holder is treated as the recipient. For those payments for which the interest holder in an entity is treated as the recipient, the U.S. withholding agent shall prepare the Form 1042–S in the same manner as a payment made to a nonqualified intermediary or flow-through entity as set forth in paragraph (c)(4)(ii) of this section. If the claims are consistent but the withholding agent has not chosen to accept the multiple claims, or if the claims are inconsistent, the withholding agent must file a separate Form 1042–S for the person or persons it has chosen to treat as the recipients.

(ii) *Payments made by U.S. withholding agents to persons that are not recipients*—(A) *Amounts paid to a nonqualified intermediary, a flow-through entity, and certain U.S. branches.* If a U.S. withholding agent makes a payment to a nonqualified intermediary, a flow-through entity, or a U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person), it must complete a separate Form 1042–S for each recipient to the extent the withholding agent can reliably associate a payment with valid documentation (within the meaning of § 1.1441–1(b)(2)(vii)) from the recipient which is associated with the withholding certificate provided by the nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution. See § 1.1474–1(d)(4)(i) for when a withholding agent may report a chapter 4 reportable amount made to such an entity in a chapter 4 withholding rate pool. See also § 1.1441–1(e)(3)(iv)(A) for when a withholding statement provided by a nonqualified intermediary may include a chapter 4 withholding rate pool of U.S. payees. If a payment is reported by the withholding agent in a chapter 4 withholding rate pool, the withholding agent must report on Form 1042–S the nonqualified intermediary or flow-through entity as a recipient associated with the applicable chapter 4 withholding rate pool. If a payment is made through tiers of nonqualified intermediaries or flow-through entities, the withholding agent must nevertheless complete Form 1042–S for the recipient to the extent it can reliably associate the payment with documentation from the recipient. A withholding agent that is completing a Form 1042–S for a recipient that receives a payment through a nonqualified intermediary, a flow-through entity, or a U.S. branch or territory financial institution must include on the Form 1042–S the name of the nonqualified intermediary, flow-through entity, U.S. branch or territory financial institution from which the recipient directly receives the payment. If a U.S. withholding agent cannot reliably associate the payment, or any portion of the payment, with valid documentation from a recipient either because no such documentation has been provided or because the nonqualified intermediary, flow-through entity, or U.S. branch or territory financial institution has failed to provide sufficient allocation information so that the withholding agent can associate the payment, or any portion thereof, with valid documentation, then the withholding agent must report the payments as made to an unknown recipient in accordance with the appropriate presumption rules for that payment. Thus, if the payment is not a withholdable payment and under the presumption rules the payment is presumed to be made to a foreign person, the withholding agent must generally withhold 30 percent of the payment and report the payment on Form 1042–S made out to an unknown recipient and shall also include the name of the nonqualified intermediary, flow-through entity, U.S. branch or territory financial institution that received the payment on behalf of the unknown recipient. If, however, the recipient is presumed to be a U.S. non-exempt recipient (as defined in § 1.1441–1(c)(21)), the withholding agent must withhold on the payment as required under section 3406 and report the payment as required under chapter 61 of the Code. See § 1.1474–1(d)(4) for reporting requirements that apply to payments of chapter 4 reportable amounts paid to nonqualified intermediaries and flow-through entities. If, however, the payment is a withholdable payment, the withholding agent must report the payment as made to a chapter 4 withholding rate pool of nonparticipating FFIs in accordance

with the presumption rule under § 1.1471–3(f)(5).

* * * * *

(iv) *Reporting by a nonqualified intermediary, flow-through entity, and certain U.S. branches.* A nonqualified intermediary, flow-through entity, or U.S. branch (including a territory financial institution) described in § 1.1441–1(e)(2)(iv) (other than a U.S. branch or territory financial institution that is treated as a U.S. person) is a withholding agent and must file Forms 1042–S for amounts paid to recipients in the same manner as a U.S. withholding agent. A Form 1042–S will not be required, however, if another withholding agent has reported the same amount for which the nonqualified intermediary, flow-through entity, or U.S. branch would be required to file a return and the entire amount that should be withheld from such payment has been withheld (including withholding and reporting in accordance with the applicable presumption rule for the payment). A nonqualified intermediary, flow-through entity, or U.S. branch must report payments made to recipients to the extent it has failed to provide the appropriate documentation to another withholding agent together with the information required for that withholding agent to reliably associate the payment with the recipient documentation or to the extent it knows, or has reason to know, that less than the required amount has been withheld. A nonqualified intermediary or flow-through entity that is required to report a payment on Form 1042–S must follow the same rules as apply to a U.S. withholding agent under paragraphs (c)(4)(i) and (ii) of this section.

(v) *Pro rata reporting for allocation failures.* If a nonqualified intermediary, flow-through entity, or U.S. branch (including a territory financial institution) described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch or territory financial institution treated as a U.S. person) uses the alternative procedures of § 1.1441–1(e)(3)(iv)(D) and fails to provide information sufficient to allocate the amount subject to reporting paid to a withholding rate pool to the payees identified for that pool, then the withholding agent shall report the payment in accordance with the rule provided in § 1.1441–1(e)(3)(iv)(D)(*6*).

* * * * *

(5) *Magnetic media reporting.* A withholding agent that makes 250 or more Form 1042–S information returns for a taxable year must file Form 1042–S returns on magnetic media. See, however, § 301.1474–1(a) of this chapter for the requirements for a withholding agent that is a financial institution to file Forms 1042–S on magnetic media. See, also, § 301.6011–2 of this chapter for requirements applicable to a withholding agent that files Forms 1042–S with the IRS on magnetic media and publications of the IRS relating to magnetic media filing.

* * * * *

(i) *Effective/applicability date.* Except as otherwise provided in paragraph (c)(2)(iii) of this section, this section shall apply to returns required for payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. 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.)

§ 1.1461–1T [Removed]

■ **Par. 20.** Section 1.1461–1T is removed.

■ **Par. 21.** Section 1.1461–2 is amended by revising paragraphs (a)(2)(i), (a)(4), and (d) to read as follows:

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

(a) * * *

(2) *Reimbursement of tax*—(i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount of tax overwithheld. In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The repayment to the beneficial owner or payee occurs before the earlier of the due date (not including extensions) for filing Form 1042–S for the calendar year of overwithholding or the date the Form 1042–S is actually filed with the IRS; and

(B) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414–1.

* * * * *

(4) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 2001, a domestic corporation C pays a dividend of $100 to N, at which time C withholds $30 and remits the balance of $70 to N. On February 10, 2002, prior to the time that C files its Form 1042 and Form 1042–S with respect to the payment, N furnishes a valid Form W–8 described in § 1.1441–1(e)(2)(i) upon which C may rely to reduce the rate of withholding to 15% under the provisions of the U.S.-U.K. tax treaty. Consequently, N advises C that its tax liability is only $15 and not $30 and requests reimbursement of $15. Although C has already deposited the $30 that was withheld, as required by § 1.6302–2(a)(1)(iv), C repays N in the amount of $15.

(ii) During 2001, C makes no other payments upon which tax is required to be withheld under chapter 3 of the Code; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2002, shows total tax withheld of $30, an adjusted total tax withheld of $15, and $30 previously paid for such year. Pursuant to § 1.6414–1(b), C claims a credit for the overpayment of $15 shown on the Form 1042 for 2001. Accordingly, it is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the calendar year 2002. The Form 1042–S required to be filed by C with respect to the dividend of $100 paid to N in 2001 is required to show tax withheld under chapter 3 of $30 and tax repaid to N of $15.

Example 2. The facts are the same as in *Example 1.* In addition, during 2002, C makes payments to N upon which it is required to withhold $200 under chapter 3 of the Code, all of which is withheld in June 2002. Pursuant to § 1.6302–2(a)(1)(iii), C deposits the amount of $185 on July 15, 2002 ($200 less the $15 for which credit is claimed on the Form 1042 for 2001). On March 15, 2003, C Corporation files its return on Form 1042 for calendar year 2002, which shows total tax withheld of $200, $185 previously deposited by C, and $15 allowable credit.

Example 3. The facts are the same as in *Example 1.* Under § 1.6302–2(a)(1)(ii), C is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Code. C withholds tax of $100 between February 8 and February 15, 2002, and deposits $75 [($100 × 90%) less $15] of the withheld tax within 3 banking days after February 15, 2002, and by depositing $10 [($100 − $15) less $75] within 3 banking days after March 15, 2002.

* * * * *

(d) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. 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.)

§ 1.1461–2T [Removed]

■ **Par. 22.** Section 1.1461–2T is removed.

■ **Par. 23.** Section 1.6041–1 is amended by revising paragraphs (d)(5)(i) and (ii) and (j) to read as follows:

§ 1.6041–1 Return of information as to payments of $600 or more.

* * * * *

(d) * * *

(5) * * *

(i) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a non-U.S. payor or a non-U.S. middleman and is paid and received outside the United States (as defined in § 1.6049–4(f)(16)).

(ii) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a payor that has no actual knowledge that the payee is a U.S. person and is paid and received outside the United States (as defined in § 1.6049–4(f)(16)), and the payor is—

* * * * *

(j) *Effective/applicability date.* This section applies to payments made on or after *January 6, 2017.* (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2010, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

§ 1.6041–1T [Removed]

■ **Par. 24.** Section 1.6041–1T is removed.

■ **Par. 25.** Section 1.6041–4 is amended by revising paragraphs (a)(1) through (3), (a)(7), (b), and (d) to read as follows:

§ 1.6041–4 Foreign-related items and other exceptions.

(a) * * *

(1) Returns of information are not required for payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or 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), (3), (4), or (5). Returns of information are also not required for a payment that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary or flow-through entity in accordance with § 1.1441–1(b) if it obtains from the intermediary or flow-through entity a withholding statement described in § 1.6049–5(b)(14) that allocates the payment to a chapter 4 withholding rate pool (as defined in § 1.6049–4(f)(5)) or specific payees to which withholding applies under chapter 4. Payments excepted from reporting under this paragraph (a)(1) may be reportable, for purposes of chapter 3 of the Internal Revenue Code (Code), under § 1.1461–1(b) and (c) and, for purposes of chapter 4 of the Code, under § 1.1474–1(d)(2). The provisions in § 1.6049–5(c) regarding documentation of foreign status shall apply for purposes of this paragraph (a)(1). The provisions in § 1.6049–5(c)(5) regarding the definitions of U.S. payor and non-U.S. payor shall also apply for purposes of this paragraph (a)(1). See § 1.1441–1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441–1 shall apply by substituting the term ''payor'' for the term ''withholding agent'' and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code and the regulations under that chapter.

(2) Returns of information are not required for payments of amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which an amount is considered to be paid and received outside the United States, see § 1.6049–4(f)(16).

(3) 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, which payment the payor 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 § 1.6041–3(q) 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 (a)(7) of this section for when reporting under section 6041is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)). The exception described in this paragraph (a)(3) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code with respect to amounts reportable under the agreement described in § 1.1441–1(e)(5)(iii).

* * * * *

(7) Returns of information are not required for payments with respect to which a return is not required by applying the rules of § 1.6049–4(c)(4) (by substituting the term ''a payment subject to reporting under section 6041'' for the term ''an interest payment'').

(b) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (a) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5, or with documentation described in paragraph (a)(1) of this section furnished by each joint owner upon which the payor or middleman can rely to treat each joint owner as a foreign payee or foreign beneficial owner. However, in the case of a withholdable payment (as defined in § 1.6049–4(f)(15)) made to joint payees, if any joint payee does not appear to be an individual, the payment is presumed made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471–1(b)(82)). See § 1.1471–3(f)(7).

* * * * *

(d) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2002, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

§ 1.6041–4T [Removed]

■ **Par. 26.** Section 1.6041–4T is removed.

■ **Par. 27.** Section 1.6042–2 is amended by revising paragraphs (a)(1)(i) and (f) to read as follows:

§ 1.6042–2 Returns of information as to dividends paid.

(a) * * *

(1) * * *

(i) Every person who makes a payment of dividends (as defined in § 1.6042–3) to any other person during a calendar year. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identifying number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of dividends paid to the other person during the calendar year aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in § 1.6049–4(c)(1)(ii) unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 of this chapter. Further, a return of information is not required under this section for—

(A) Payments with respect to which a return is not required by applying the rules of § 1.6049–4(c)(4) (by substituting the term ''dividend'' for the term ''interest''); or

(B) Payments made by a paying agent on behalf of a corporation described in section 1297(a) with respect to a shareholder of the corporation if—

(*1*) The paying agent obtains from the corporation a written certification signed by a person authorized to sign on behalf of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the paying agent relies on the provisions of paragraph (a)(1)(i)(B) of this section, and the paying agent has no reason to know the written certification is unreliable or incorrect;

(*2*) The paying 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 (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 ''paying agent'' and ''corporation'' for the terms ''withholding agent'' and ''payee,'' respectively) and validates that status annually;

(*3*) The paying agent obtains a written certification representing that the corporation shall report the payment as part of its reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)) with respect to its U.S. accounts and provided the paying agent does not know that the corporation is not reporting the payment as required. The paying agent may rely on the written certification until there is a change in circumstances or the paying agent knows or has reason to know that the statement is unreliable or incorrect. A paying agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)) must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(*4*) The paying agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payments.

* * * * *

(f) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. 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.)

§ 1.6042–2T [Removed]

■ **Par. 28.** Section 1.6042–2T is removed.

■ **Par. 29.** Section 1.6042–3 is amended by:

■ 1. Revising paragraphs (b)(1)(iii) and (iv), (b)(1)(vi), and (b)(3).

■ 2. Removing paragraph (b)(5).

■ 3. Adding paragraph (d).

The revisions and addition read as follows:

§ 1.6042–3 Dividends subject to reporting.

* * * * *

(b) * * *

(1) * * *

(iii) Distributions or payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or 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), (3), (4), or (5). Returns of information are also not required for payments that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary in accordance with § 1.1441–1(b) if it obtains from the intermediary entity a withholding statement (described in § 1.6049–5(b)(14)) that allocates the payment to a chapter 4 withholding rate pool (as defined in § 1.6049–4(f)(5)) or to specific payees to which withholding under chapter 4 applies. Payments excepted from reporting under this paragraph (b)(1)(iii) may be reportable, for purposes of chapter 3 of the Internal Revenue Code (Code), under § 1.1461–1(b) and (c) or, for chapter 4 purposes, under § 1.1474–1(d)(2). The provisions in § 1.6049–5(c) regarding documentation of foreign status shall apply for purposes of this paragraph (b)(1)(iii). The provisions in § 1.6049–5(c) regarding the definitions of U.S. payor and non-U.S. payor shall also apply for purposes of this paragraph (b)(1)(iii). The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code.

(iv) Distributions or payments from sources outside the United States (as determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) that are paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which an amount is considered to be paid and received outside the United States, see § 1.6049–4(f)(16).

* * * * *

(vi) 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, which payment the payor 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 § 1.6049–4(c)(1)(ii) to the person from whom the U.S. branch receives the payment, the amount paid by the U.S. branch to such person is a dividend. See, however, § 1.6042–2(a)(1)(i)(A) for when reporting under

section 6042 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 (b)(1)(vi) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code with respect to amounts reportable under the agreement described in § 1.1441–1(e)(5)(iii).

* * * * *

(3) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (b) are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(1)(iii) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. However in the case of a withholdable payment (as defined in § 1.6049–4(f)(15)) made to joint payees, if any such joint payee does not appear to be an individual, the payment is presumed made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471–1(b)(82)). See § 1.1471–3(f)(7). For purposes of applying this paragraph (b)(3), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

* * * * *

(d) *Effective/applicability date.* This section applies on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. 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).

§ 1.6042–3T [Removed]

■ **Par. 30.** Section 1.6042–3T is removed.

■ **Par. 31.** Section 1.6045–1 is amended by:

■ 1. Revising paragraphs (c)(3)(ii) and (xiv).

■ 2. Removing paragraph (c)(3)(xv) and (c)(7)(v).

■ 3. Revising paragraphs (g)(1)(i), (g)(3)(iv), and (g)(4),

■ 4. Removing paragraph (g)(5).

■ 5. Revising paragraphs (m)(2)(ii) and (n)(12)(ii).

■ 6. Adding paragraph (q).

The revisions and addition read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(c) * * *

(3) * * *

(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'').

* * * * *

(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 a person authorized to sign on behalf 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,'' respectively) and validates that status annually;

(C) The stock transfer agent obtains 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. The paying agent may rely on the written certification until there is a change in circumstances or the paying agent knows or has reason to know that the statement is unreliable or incorrect. 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.

* * * * *

(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,'' respectively, and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Code. The provisions of § 1.6049–5(d) shall apply by substituting the terms ''broker'' and ''customer'' for the terms ''payor'' and ''payee,'' respectively. 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).

* * * * *

(3) * * *

(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 reason, 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 a 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.

* * * * *

(m) * * *

(2) * * *

(ii) *Delayed effective date for certain options*—(A) Notwithstanding paragraph (m)(2)(i) of this section, if an option, stock right, or warrant is issued as part of an investment unit described in § 1.1273–2(h), paragraph (m) of this section applies to the option, stock right, or warrant if it is acquired after December 31, 2015.

* * * * *

(n) * * *

(12) * * *

(ii) *Effective/applicability date.* Paragraph (n)(12)(i) of this section applies to a debt instrument described in paragraph (n)(12)(i)(A) or (B) of this section that is acquired after February 17, 2016. However, a broker may rely on paragraph (n)(12)(i) of this section for a debt instrument described in paragraph (n)(12)(i)(A)(or (B) of this section acquired before February 18, 2016.

* * * * *

(q) *Effective/applicability date.* Except as otherwise provided in paragraphs (m)(2)(ii), and (n)(12)(ii) of this section, this section applies on or after January 6, 2017. (For rules that apply after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016.)

§ 1.6045–1T [Removed]

■ **Par. 32.** Section 1.6045–1T is removed.

■ **Par. 33.** Section 1.6049–4 is amended by revising paragraphs (b)(1), (c)(4), (f)(3), (f)(4)(ii), (f)(5) through (16), and (h) to read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(b) *Information to be reported*—(1) *Interest payments.* Except as provided in paragraphs (b)(3) and (5) of this section, in the case of interest other than original issue discount treated as interest under § 1.6049–5(f), an information return on Form 1099 shall be made for the calendar year showing the aggregate amount of the payments, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the payments, if any, and such other information as required by the forms. An information return is generally not required if the amount of interest paid to a person aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee (*i.e.,* exempt recipient) has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)-3 (Employment Tax Regulations). For reporting interest paid to certain nonresident alien individuals, see § 1.6049–8.

* * * * *

(c) * * *

(4) *Coordination of reporting with chapter 4 reporting or an applicable IGA*—(i) *U.S. accounts reported by FFIs that are non-U.S. payors.* An information return shall not be required with respect to an interest payment made by a participating FFI (including a reporting Model 2 FFI), or registered deemed-compliant FFI (including a reporting Model 1 FFI), that is a non-U.S. payor (as defined in § 1.6049–5(c)(5)) to an account holder of an account maintained by the FFI, when the payment is not subject to withholding under chapter 4 or to backup withholding under section 3406, and the conditions of paragraphs (c)(4)(i)(A), (B), or (C) of this section, as applicable, are met. See paragraph (c)(4)(iii) of this section for circumstances in which an FFI may allocate a payment described in this paragraph (c)(4)(i) to a chapter 4 withholding rate pool of U.S. payees.

(A) The FFI is a participating FFI (including a reporting Model 2 FFI) reporting the account holder of the U.S. account (as defined in § 1.1471–1(b)(133)) pursuant to either § 1.1471–4(d)(3) or (5) for the year in which the payment is made (including reporting of the account holder's TIN).

(B) The FFI is a registered deemed-compliant FFI (other than a reporting Model 1 FFI) reporting the account holder of the U.S. account pursuant to the conditions of its applicable deemed-compliant status under § 1.1471–5(f)(1) for the year in which the payment is made (including reporting of the account holder's TIN).

(C) The FFI is a reporting Model 1 FFI reporting the account holder of the reportable U.S. account pursuant to an applicable Model 1 IGA for the year in which the payment is made (including reporting of the account holder's TIN).

(ii) *Other accounts reported by FFIs under chapter 4.* An information return shall not be required under this section with respect to a payment that is not subject to withholding under chapter 3 (as defined in § 1.1441–2(a)) or backup withholding under § 31.3406(g)–1(e) and that is made to a recalcitrant account holder of a participating FFI or registered deemed-compliant FFI (or non-consenting U.S. account of a reporting Model 2 FFI), provided that the FFI reports such account holder in accordance with the classes of account holders described in § 1.1471–4(d)(6) for the year in which the payment is made. See paragraph (c)(4)(iii) of this section for circumstances in which an FFI may allocate a payment described in this paragraph (c)(4)(ii) to a chapter 4 withholding rate pool of U.S. payees. In the case of a payment made by an FFI that is a reporting Model 1 FFI, an information return shall not be required with respect to a payment that is not subject to withholding under chapter 3 or backup withholding under § 31.3406(g)–1(e) and that is made to an

account holder of the FFI if the account—

(A) Has U.S. indicia for which appropriate documentation sufficient to treat the account as held by other than a specified U.S. person has not been provided pursuant to the due diligence requirements described in an applicable Model 1 IGA, and

(B) Is therefore treated as a U.S. reportable account that the FFI is required to report pursuant to the applicable Model 1 IGA.

(iii) *Coordination of reporting exceptions with reporting of chapter 4 withholding rate pools.* For purposes of paragraphs (c)(4)(i) and (ii) of this section, a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) receiving a payment from another payor may provide a withholding statement to the payor allocating the payment to a chapter 4 withholding rate of pool of U.S. payees only if the payment is excepted from reporting under paragraph (c)(4)(i) of this section or if the payment is both excepted from reporting under paragraph (c)(4)(ii) of this section and not subject to withholding under chapter 4. See § 1.6049–5(b)(14) (providing an exception from reporting under section 6049 to a payor that has been furnished a withholding statement from an participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) and that allocates the payment to a chapter 4 withholding rate pool). Thus, for example, a U.S. payor that is a participating FFI may not allocate a payment to a chapter 4 withholding rate pool of U.S. payees on a withholding statement described in § 1.6049–5(b)(14) when the payment is made to a U.S. account maintained by the FFI, regardless of whether the FFI reports the account in accordance with § 1.1471–4(d)(3) because the U.S. payor is not excepted from reporting under this section pursuant to paragraph (c)(4)(i) of this section.

(iv) *Example.* The application of the provisions of paragraphs (c)(4)(ii) and (iii) of this section may be illustrated by the following example:

Example. USP is a payor that makes an interest payment that is not a withholdable payment (as defined in paragraph (f)(15) of this section) to RM2, a U.S. payor and reporting Model 2 FFI. The payment is paid and received outside of the United States and is not an amount subject to withholding under chapter 3. RM2 receives the payment as an intermediary with respect to a preexisting account held by A. RM2 has account information with respect to A which includes U.S. indicia as described in § 1.1441–7(b)(5) or (8). A does not provide consent for RM2 to report A's account. Under the presumption rules described in § 1.6049–5(d)(2)(i), RM2 is required to treat A as a U.S. non-exempt recipient. Despite this presumption rule, and because backup withholding does not apply under § 31.3406(g)–1(e), no information return shall be required with respect to the payment under paragraph (c)(4)(ii) of this section if A is reported by RM2 consistent with § 1.1471–4(d)(6) as a non-consenting account holder. Additionally, RM2 may include A in the chapter 4 withholding rate pool of U.S. payees on the withholding statement provided to USP consistent with the requirements of paragraph (c)(4)(iii) of this section.

* * * * *

(f) * * *

(3) *Obligation.* The term *obligation* includes bonds, debentures, notes, certificates, and other evidences of indebtedness regardless of how denominated. For the definition of the term *offshore obligation,* see paragraph (f)(9) of this section.

(4) * * *

(ii) *Example.* The application of the provisions of paragraph (f)(4) of this section may be illustrated by the following example:

Example. In January 1984, Broker B, a U.S. payor, purchases on behalf of its customer, Individual A, an obligation issued by partnership in a public offering on that date. Broker B holds the obligation for A throughout 1984. Broker B is required to make an information return showing the amount of original issue discount treated as paid to A under § 1.6049–5(f).

(5) *Chapter 4 withholding rate pool.* The term *chapter 4 withholding rate pool* has the meaning set forth in § 1.1471–1(b)(20). However, for determining the U.S. payees included in a chapter 4 withholding rate pool for purposes of section 6049, see paragraph (c)(4)(iii) of this section.

(6) *Foreign financial institution (or FFI).* The term *foreign financial institution* or *FFI* means an entity described in § 1.1471–1(b)(47),

(7) *Intergovernmental agreement (or IGA).* The term *intergovernmental agreement* or *IGA* has the meaning set forth in § 1.1471–1(b)(67) (*i.e.,* either a *Model 1 IGA* described in § 1.1471–1(b)(78) or a *Model 2 IGA* described in § 1.1471–1(b)(79)).

(8) *Non-consenting U.S. accounts.* The term *non-consenting U.S. accounts* has the meaning set forth in an applicable Model 2 IGA.

(9) *Offshore obligation.* The term offshore obligation means an offshore obligation defined in § 1.6049–5(c)(1). For the definition of the term *obligation,* see paragraph (f)(3) of this section.

(10) *Participating FFI.* The term *participating FFI* means an FFI that is described in § 1.1471–1(b)(91).

(11) *Recalcitrant account holder.* The term *recalcitrant account holder* has the same meaning set forth in § 1.1471–1(b)(110).

(12) *Registered deemed-compliant FFI.* The term *registered deemed-compliant FFI* means an FFI that is described in § 1.1471–1(b)(111).

(13) *Reporting Model 1 FFI.* The term *reporting Model 1 FFI* means an FFI that is described in § 1.1471–1(b)(114).

(14) *Reporting Model 2 FFI.* The term *reporting Model 2 FFI* means a participating FFI that is described in § 1.1471–1(b)(91).

(15) *Withholdable payment.* The term *withholdable payment* means a payment described in § 1.1471–1(b)(145).

(16) *Paid and received outside the United States*—(i) *In general.* Except as otherwise provided in paragraphs (f)(16)(ii) and (iii) of this section, the term *paid and received outside the United States* means an amount that is paid by a payor or middleman outside the United States as described in § 1.6049–5(e).

(ii) *Transfers to the United States.* Without regard to the location of the account from which the amount is drawn, an amount that is described in paragraph (f)(16)(ii)(A) or (B) of this section and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address (including an amount paid with respect to a bond or a discount obligation described in § 1.6049–5(e)(4)) is not considered to be paid and received outside the United States.

(A) An amount is described in this paragraph (f)(16)(ii)(A) if it is paid by an issuer or the paying agent of the issuer with respect to an obligation that is—

(*1*) Issued by a U.S. payor, as defined in § 1.6049–5(c)(5);

(*2*) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(*3*) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(B) An amount is described in this paragraph (f)(16)(ii)(B) if it is paid by a U.S. middleman (as defined in § 1.6049–5(c)(5)) that, as a custodian, nominee, or other agent of a payee, collects the amount for or on behalf of the payee.

(iii) *Deposits or accounts with banks and other financial institutions.* In the case of an amount paid by a bank or other financial institution with respect to a deposit or an account that is considered paid at a branch or office

outside the United States as described in § 1.6049–5(e)(2), the amount is not considered paid and received outside the United States if the institution has knowledge that the customer has transmitted instructions to an agent, branch, or office of the institution from inside the United States by mail, telephone, electronic transmission, or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(iv) *Examples.* The application of the provisions of paragraph (f)(16) of this section 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, as defined in § 1.6049–5(c)(5). A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations . FB, a foreign branch of DC, a domestic corporation, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon to FB at its office outside the United States with instructions to transfer funds to a bank account maintained by A in the United States. FB transfers the funds in accordance with A's instructions. Even though the amount is credited to an account in the United States, the interest on the FC bonds is paid and received outside the United States under paragraph (f)(16)(ii) of this section and § 1.6049–5(e)(3) because the coupon is presented for payment outside the United States; because FC is a foreign person that is not a U.S. payor or U.S. middleman, as defined in § 1.6049–5(d)(1); because FB is not acting as A's agent; and because the obligation is not registered under the Securities Act of 1933 (15 U.S.C. 77a), listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

Example 2. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in § 1.6049–5(d)(1). B, a United States citizen, holds a bond issued by FC in registered form under section 163(f) and the regulations thereunder and registered under the Securities Act of 1933 (15 U.S.C. 77a). The bond is not a foreign-targeted registered obligation as defined in § 1.871–14(e)(2). DB, a United States branch of a foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (f)(16)(ii)(A)(*2*) of this section. The interest on the FC bonds paid to B by FC is not paid and received outside the United States under paragraph (f)(16) of this section.

Example 3. The facts are the same as in *Example 2* except that the checks are prepared and mailed in the United States by DC, a U.S. corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the interest on the FC bonds paid by DC is not paid and received outside the United States under paragraph (f)(16)(i) of this section.

* * * * *

(h) *Effective/applicability dates.* Except as otherwise provided in paragraphs (b)(5)(ii) and (d)(3)(ii)(B) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016.)

§ 1.6049–4T [Removed]

■ **Par. 34.** Section 1.6049–4T is removed.

■ **Par. 35.** Section 1.6049–5 is amended by:

■ 1. Revising paragraphs (b)(6) through (8), (b)(10) through (b)(11)(ii)(A), (b)(12), (b)(14) and (15), and (c)(1)(i) through (iii).

■ 2. Adding paragraph (c)(1)(iv).

■ 3. Revising paragraphs (c)(2) and (3) and (c)(4) introductory text and (c)(4)(i).

■ 4. Removing paragraph (c)(4)(ii).

■ 5. Redesignating paragraphs (c)(4)(iii) and (iv) as paragraphs (c)(4)(ii) and (iii).

■ 6. Revising paragraphs (c)(5)(i)(F), (c)(6), (d)(1) and (2), (d)(3)(i) through (d)(3)(iii)(A), (d)(4), (e), and (g).

The addition and revisions read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(b) * * *

(6) Amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code (Code) and the regulations under those provisions) paid by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (c)(5) of this section) and paid and received outside the United States. See § 1.6049–4(f)(16) for circumstances in which a payment is considered to be paid and received outside the United States.

(7) Portfolio interest, as defined in § 1.871–14(b)(1), paid with respect to obligations in bearer form described in section 871(h)(2)(A), as in effect prior to the amendment by section 502 of the Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), Public Law 111–147, or section 881(c)(2)(A), as in effect prior to the amendment by section 502 of the HIRE Act, that were issued prior to March 19, 2012, or with respect to a foreign-targeted registered obligation described in § 1.871–14(e)(2) that was issued prior to January 1, 2016, and for which the documentation requirements described in § 1.871–14(e)(3) and (4) have been satisfied (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest described in § 1.871–14(c)(1)(ii), paid with respect to obligations in registered form described in section 871(h)(2) or 881(c)(2) that is not described in paragraph (b)(7) of this section.

* * * * *

(10)(i) Amounts paid and received outside the United States under § 1.6049–4(f)(16) (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that are paid by a custodian or nominee or other agent of the payee, of amounts that that it receives for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: Has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(*3*)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect):

> By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).

(ii) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in § 1.6049–4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in

section 163(f)(2)(B)(i) and (f)(2)(B)(ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10). The exemption from reporting described in this paragraph (b)(10) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in either paragraph (b)(11)(i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid and received outside the United States as defined in § 1.6049–4(f)(16) (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor). The exemption from reporting described in this paragraph (b)(11) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the HIRE Act, and issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public offering of securities. For purposes of this paragraph (b)(11)(i), a middleman may treat an obligation as described in section 163(f)(2)(B), as in effect prior to the amendment by section 502 of the HIRE Act, if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section.

(ii)(A) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(*3*)). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(B)(i) and (ii), as in effect prior to the amendment by section 502 of the HIRE Act, and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in paragraph (b)(11)(ii)(B) of this section.

* * * * *

(12) Payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with paragraph (d)(1) of this section or presumed to be made to a foreign payee under paragraph (d)(2) or (3) of this section. However, such payments may be reportable under § 1.1461–1(b) and (c) or under § 1.1474–1(d)(2) (for a chapter 4 reportable amount (as described in § 1.1471–1(b)(18)). The provisions of § 1.1441–1 shall apply by substituting the term ''payor'' for the term ''withholding agent'' and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code. In the event of a conflict between the provisions of § 1.1441–1 and paragraph (d) of this section in determining the foreign status of the payee, the provisions of § 1.1441–1 shall govern for payments of amounts subject to withholding under chapter 3 of the Code and the provisions of paragraph (d) of this section shall govern in other cases. This paragraph (b)(12) does not apply to interest paid on or after January 1, 2013, to a nonresident alien individual to the extent provided in § 1.6049–8.

* * * * *

(14) Payments that a payor or middleman can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign intermediary or flow-through entity in accordance with § 1.1441–1(b) if it obtains from the foreign intermediary or flow-through entity a withholding statement under § 1.1471–3(c)(3)(iii)(B)(2) (describing an FFI withholding statement), § 1.1471–3(c)(3)(iii)(B)(3) (describing a chapter 4 withholding statement), § 1.1441–1(e)(3)(iv) (describing a withholding statement provided by a non-qualified intermediary), § 1.1441–1(e)(5)(v) (describing a withholding statement provided by a qualified intermediary), or under § 1.1441–5 (describing a withholding statement provided by a foreign partnership, foreign simple trust, or foreign grantor trust), that allocates the payment (or portion of a payment) to a chapter 4 withholding rate pool or specific payees to which withholding applies under chapter 4. The provisions of each of the foregoing sections shall apply by substituting the term ''payor'' for the term ''withholding agent.'' A payor or middleman may rely on a withholding statement provided by a foreign intermediary or flow-through entity that identifies a chapter 4 withholding rate pool of U.S. payees (as described in § 1.6049–4(c)(4)) or, with respect to a withholdable payment, a chapter 4 withholding rate pool of recalcitrant account holders (as described in § 1.1471–4(d)(6)) provided that the payor or middleman identifies the foreign intermediary or flow-through entity that maintains the accounts (as described in § 1.1471–5(b)(5)) included in the chapter 4 withholding rate pool as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) by applying the rules in § 1.1471–3(d)(4) or in § 1.1471–3(e)(4)(vi)(B), as applicable, for identifying the payee of a payment (by substituting the term ''payor'' for the term ''withholding agent''). See, however, § 1.1441–1(e)(5)(v)(C)(*2*)(*i*) for when a qualified intermediary may provide a single pool of recalcitrant account holders (without the need to subdivide into the pools described in § 1.1471–4(d)(6)). Additionally, when a foreign intermediary or flow-through entity provides to a payor or middleman a withholding statement that allocates the payment (or portion of a payment) to a chapter 4 withholding rate pool of U.S. payees, the payor or middleman may also rely on the withholding statement if the payor or middleman identifies the intermediary or flow-through entity as a qualified intermediary (as defined in § 1.1441–1(c)(15) by applying the rules described in § 1.1441–1(b)(2)(vii)) that provides the certification described in § 1.1441–1(e)(3)(ii)(D) with respect to U.S. payees that hold accounts with a foreign intermediary or flow-through entity

other than the qualified intermediary providing the certification.

(15) 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, which payment the payor 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 § 1.6049–4(c)(1)(ii) to the person from whom the U.S. branch receives the payment, the amount paid by the U.S. branch to such person is interest or original issue discount. See, however, § 1.6049–4(c)(4) for when reporting under section 6049 is coordinated with reporting under chapter 4 or an applicable IGA (as defined in § 1.6049–4(f)(7)). The exception for payments described in this paragraph (b)(15) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code for the payment under the agreement described in § 1.1441–1(e)(5)(iii).

* * * * *

(c) *Applicable rules*—(1) *Documentary evidence for offshore obligations and certain other obligations*—(i) A payor may rely on documentary evidence described in § 1.1471–3(c)(5)(i) instead of a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) in the case of an amount paid outside the United States (as described in paragraph (e) of this section) with respect to an offshore obligation, or, in the case of broker proceeds described in § 1.6045–1(c)(2), to the extent provided in § 1.6045–1(g)(1)(i). For purposes of this section, the term *offshore obligation* means—

(A) An account maintained at an office or branch of a bank or other financial institution located outside the United States; or

(B) An obligation as defined in § 1.6049–4(f)(3) (other than an account described in paragraph (c)(1)(i)(A) of this section), contract, or other instrument with respect to which the payor is either engaged in business as a broker or dealer in securities or a financial institution (as defined in § 1.1471–5(e)) that engages in significant activities at an office or branch located outside the United States. For purposes of the preceding sentence, an office or branch of such payor shall be considered to engage in significant activities with respect to an obligation when it participates materially and actively in negotiating the obligation under the principles described in § 1.864–4(c)(5)(iii) (substituting the term ''obligation'' for the term ''stock or security'').

(ii) A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person; and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed for purposes of this paragraph (c)(1) by retaining an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the documents reviewed for as long as it may be relevant to the determination of the payor's obligation to report under § 1.6049–4 and this section and noting in its records the date on which the document was received and reviewed. Documentary evidence furnished for a payment of an amount subject to withholding under chapter 3 of the Code or that is a chapter 4 reportable amount under § 1.1474–1(d)(2) must contain all of the information that is necessary to complete a Form 1042–S for that payment. See §§ 1.1471–3(c) and 1.1471–4(c) for additional documentation requirements to identify a payee or account holder for chapter 4 purposes that may apply in addition to the requirements under paragraph (c) of this section.

(iii) Even if an account or obligation (as defined in § 1.6049–4(f)(3)) is not maintained outside the United States (maintained in the United States), a payor may rely on documentary evidence associated with a withholding certificate described in § 1.1441–1(e)(3)(iii) with respect to the persons for whom an entity acting as an intermediary collects the payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in § 1.1441–1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in § 1.1441–1(c)(24), or foreign owners of a foreign grantor trust, as defined in § 1.1441–1(c)(26), even though the partnership or trust account is an obligation maintained in the United States.

(iv) For accounts opened on or after July 1, 2014, and before January 1, 2015, and for obligations entered into on or after July 1, 2014, and before January 1, 2015, a payor may continue to apply the rules of §§ 1.6049–5(c)(1) and (c)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2013, rather than this paragraph (c)(1) and paragraph (c)(4) of this section. A payor that applies the rules of §§ 1.6049–5(c)(1) and (c)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2013, to an account or obligation must also apply § 1.1441–6(c)(2) (to the extent applicable) and § 1.6049–5(e) both as in effect and contained in 26 CFR part 1 revised April, 2013, with respect to the account or obligation.

(2) *Other applicable rules.* The provisions of § 1.1441–1(e)(4)(i) through (xii) (regarding who may sign a certificate, validity period of certificates and documentary evidence, retention of certificates, reliance rules, etc.) shall apply (by substituting the term ''payor'' for the term ''withholding agent'' and disregarding the fact that the provisions under § 1.1441–1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See § 1.1441–1(b)(2)(vii) for provisions dealing with reliable association of a payment with documentation.

(3) *Standards of knowledge.* A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of § 1.1441–7(b)(2) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W–9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in § 31.3406(h)–3(e) of this chapter (see the information and certification described in § 31.3406(h)–3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W–9). The provisions of § 1.1441–7(b)(2) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which § 1.1441–7(b)(2) is otherwise limited. The exemptions from reporting described in paragraphs

(b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of paragraph (c)(1) of this section for payments of amounts that are not subject to withholding under chapter 3 of the Code, other than amounts described in paragraph (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. source deposit interest described in section 871(i)(2)(A) or 881(d)(3)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (*e.g.,* deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). A payor may rely upon documentation in lieu of documentary evidence (as described in paragraph (c)(1) of this section) or a written statement (as defined in § 1.1471–1(b)(150)) or another statement to the extent permitted in paragraphs (c)(4)(i) through (iii) of this section, until the payor knows or has reason to know of a change in circumstance that makes the documentation unreliable or incorrect (as defined in § 1.1441–1(e)) when the payor does not have customer information for the payee that includes any of the U.S. indicia described in § 1.1471–3(c)(6)(ii)(C)(*1*). Further, a payor may maintain such documentation or documentary evidence as required in paragraph (c)(4)(iv) of this section.

(i) *Statement in lieu of documentary evidence with respect to accounts.* If under the local laws, regulations, or practices of a country in which an account is maintained, it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section with respect to the type of account, the payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on the statement described in this paragraph (c)(4)(i) (or such substitute statement as the Internal Revenue Service may prescribe) made on an account opening form. However, see, also § 1.1471–4(c) or an applicable IGA for additional documentation requirements that may apply to a participating FFI (including a reporting Model 2 FFI) for determining the status of its account holders for chapter 4 purposes. The statement referred to in this paragraph (c)(4)(i) must appear near the signature line and must state, ''By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. Federal income tax and that he/she/it is not acting for, or on behalf of, a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days.'' Additionally, a payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or § 1.1471–3(c)(3)(ii) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on a written statement described in paragraph § 1.1471–1(b)(150) to the extent a payor uses such written statement to establish a payee's chapter 4 status and is permitted to use the written statement under § 1.1471–3(d) (by substituting the term ''payor'' for the term ''withholding agent'') without any other documentary evidence.

(ii) *Documentation under IGA.* A payor that is a reporting Model 1 FFI or reporting Model 2 FFI may rely upon documentation or information establishing a payee's status that is permitted under an applicable IGA for determining whether the account of the payee is other than a U.S. account and regardless of whether such documentation or certification is described in paragraph (c)(1) of this section or § 1.1441–1(e)(2).

(iii) *Maintenance of documentation and written statement.* A payor maintains documentation if it either maintains the documentary evidence as described in paragraph (c)(1) of this section or retains a record of the documentary evidence reviewed if the payor is not required to retain copies of the documentation pursuant to the payor's AML due diligence (as defined in § 1.1471–1(b)(4)). A payor retains a record of documentary evidence reviewed by noting in its records the type of documentation reviewed, the date the document was reviewed, the document's identification number (if any), and whether such documentation contained any U.S. indicia described in § 1.1441–7(b)(8). Any statement described in paragraph (c)(4)(i) of this section, must be retained in accordance with § 1.1471–3(c)(6)(iii).

(5) * * *

(i) * * *

(F) A U.S. branch or territory financial institution described in § 1.1441–1(b)(2)(iv) that is treated as a U.S. person.

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(6) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section:

Example 1. FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public offering. Interest is paid on the obligation within the United States by DC, a U.S. corporation that is the designated paying agent of FC. D does not have an account with DC. Although interest paid on the obligation issued by FC is foreign source, the interest paid by DC to D is considered to be interest under paragraph (b)(6) of this section for purposes of information reporting under section 6049 because it is not paid and received outside the United States within the meaning of § 1.6049–4(f)(16).

Example 2. The facts are the same as in *Example 1* except that D is a nonresident alien individual who has furnished DC with a Form W–8 in accordance with the provisions of § 1.1441–1(e)(1)(ii). By reason of paragraph (b)(12) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

Example 3. The facts are the same as in *Example 2* except that the obligation of FC is held in a custodial account for D by FB, a foreign branch of a U.S. financial institution. By reason of paragraph (c)(5) of this section, FB is considered to be a U.S. middleman. Therefore, FB is required to make an information return unless FB may treat D as a beneficial owner that is a foreign person in accordance with the provisions of § 1.1441–1(e)(1)(ii).

Example 4. The facts are the same as in *Example 3* except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is a non-U.S. middleman described in paragraph (c)(5) of this section. The payment by NC to D is paid and received outside of the United States under § 1.6049–4(f)(16) and therefore is not considered to be a payment of interest for purposes of section 6049 pursuant to paragraph (b)(6) of this section. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

(d) *Determination of status as U.S. or foreign payee and applicable presumptions in the absence of documentation*—(1) *Identifying the payee.* The provisions of §§ 1.1441–1(b)(2), 1.1441–5(c)(1) and (e)(2) and (3) shall apply (by substituting the term ''payor'' for the term ''withholding agent'') to identify the payee (other than a payee included in a chapter 4 withholding rate pool described in paragraph (b)(14) of this section) for

purposes of this section (and other sections of the regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of a payment of an amount that is not subject to withholding under chapter 3 of the Code and that is not a withholdable payment (as defined in § 1.6049–4(f)(15)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (*e.g.,* deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). The exceptions to the application of § 1.1441–1(b)(2) to amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments are as follows:

(i) The provisions of § 1.1441–1(b)(2)(ii), dealing with payments to a U.S. agent or intermediary of a foreign person, shall not apply. Thus, a payment to a U.S. agent or intermediary of a foreign person is treated as a payment to a U.S. payee.

(ii) Payments to U.S. branches or territory financial institution described in § 1.1441–1(b)(2)(iv) shall be treated as payments to a foreign payee, irrespective of the fact that the U.S. branch or territory financial institution is otherwise treated as a U.S. person for payments of amounts subject to withholding under chapter 3 and withholdable payments, and irrespective of the fact that the branch or territory financial institution is treated as a U.S. payor for purposes of paragraph (c)(5) of this section.

(2) *Presumptions of U.S. or foreign status in the absence of documentation*—(i) *In general.* Except as otherwise provided in this paragraph (d)(2)(i), for purposes of this section (and other sections of regulations under this chapter 61 to which this paragraph (d)(2) applies), the provisions of § 1.1441–1(b)(3)(i) through (ix) and § 1.1441–5(d) and (e)(6) shall apply (by substituting the term ''payor'' for the term ''withholding agent'') to determine the classification (*e.g.,* individual, corporation, partnership, trust), status (*i.e.,* a U.S. or a foreign person), and other relevant characteristics (*e.g.,* beneficial owner or intermediary) of a payee if a payment cannot be reliably associated with valid documentation under § 1.1441–1(b)(2)(vii) irrespective of whether the payments are subject to withholding under chapter 3 of the Code or are withholdable payments. The provisions of § 1.1441–1(b)(3)(iii)(D) and (vii)(B) (referencing presumption rules for payments with respect to offshore obligations) shall not apply to a payment of an amount not subject to withholding under chapter 3, unless it is an amount that is a withholdable payment made to a payee that is an entity. Thus, in the case of a withholdable payment made to an entity, the presumption rules of § 1.1441–1(b)(3)(iii)(D) and (vii)(B) shall apply regardless of whether the payment is an amount subject to withholding under chapter 3. Additionally, in the case of an amount paid outside the United States with respect to an offshore obligation described in § 1.1441–1(b)(3)(iii)(D) or (vii)(B) of an amount not subject to withholding under chapter 3 and that is treated as made to a payee that is an individual, the presumption rules of § 1.1441–1(b)(3)(iii) shall not apply, and the payee shall be presumed a U.S. person only when the payee has any of the indicia of U.S. status that are described in § 1.1441–7(b)(5) or (8). In a case in which a withholding agent makes a withholdable payment that cannot reliably be associated with documentation, see § 1.1471–3(f)(4) and (5) for determining the status of the payee for chapter 4 purposes when the payment is treated as made to a foreign entity (by substituting the term ''payor'' for the term ''withholding agent''). The rules of § 1.1441–1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by substituting the term ''payor'' for the term ''withholding agent.'' For this purpose, the information, documentary evidence, statement, or other documentation described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee.* When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with payments described in § 1.1441–6(c)(2) (or credits an account with broker proceeds from securities described in § 1.1441–6(c)(2)), that are reportable under section 6042, 6045, 6049, or 6050N may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, if applicable, choose to treat the account as owned by a foreign person (and apply the grace period described in § 1.1441–1(b)(3)(iv)) if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in § 1.1441–1(e)(2), or the payor holds a withholding certificate that is no longer reliable other than because the validity period as described in § 1.1441–1(e)(4)(ii)(A) has expired. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account. In the case of an existing account for which the payor holds a Form W–8 or documentary evidence of foreign status, the payor may apply the provisions of the grace period described in § 1.1441–1(b)(3)(iv), beginning on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in § 1.1441–1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account for purposes of this paragraph (d)(2)(ii) if the account holder already holds an account at the branch location at which the new account is opened, or if the account is treated as a consolidated obligation as defined in § 1.1471–(1)(b)(23) for purpose of chapter 4 to the extent the account does not receive any amounts subject to withholding under chapter 3. A new account shall also be treated as an existing account for purposes of this paragraph (d)(2)(ii) if an account is held at another branch location if the institution maintains an account information system described in § 1.1441–1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins or the date that valid documentation is provided. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is equal to or less than 28 percent (or other statutory tax rate that is applicable to backup withholding) of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account, or paid with respect to an account, during the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been

received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See § 31.6413(a)–3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of § 31.3406(d)–3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of § 1.1441–1(e)(4)(iv). See § 1.1092(d)–1 for a definition of the term actively traded for purposes of this paragraph (d)(2)(ii).

(iii) *Joint owners.* Amounts paid to accounts held jointly for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (b) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(12) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. In the case of an amount that is a withholdable payment made to a joint account, however, see § 1.1471–3(f)(7) for when the payment is treated as made to a foreign payee that is a nonparticipating FFI (as defined in § 1.1471–1(b)(82)). For purposes of applying this paragraph (d)(2)(iii), the grace period described in paragraph (d)(2)(ii) of this section shall apply only if each payee qualifies for such grace period.

(3) *Payments to foreign intermediaries or flow-through entities*—(i) *Payments of amounts subject to withholding under chapter 3 of the Code or withholdable payments.* In the case of payments of amounts that the payor may treat as made to a foreign intermediary or flow-through entity in accordance with §§ 1.1441–1(b)(3)(ii)(C) and (b)(3)(v)(A) and 1.1441–5(c) or (e) and that are subject to withholding under § 1.1441–2(a), the provisions of §§ 1.1441–1(b)(2)(v) and 1.1441–5(c)(1), (e)(2), and (3) shall apply (by substituting the term ''payor'' for the term ''withholding agent'') to identify the payee. If a payment of an amount subject to withholding cannot be reliably associated with valid documentation from a payee in accordance with § 1.1441–1(b)(2)(vii), the presumption rules of §§ 1.1441–1(b)(3)(v) and 1.1441–5(d) and (e)(6) shall apply to determine the payee's status for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies). In the case of an amount that is a withholdable payment, see § 1.1471–3(c)(3) for rules to identify the payee and see § 1.1471–3(f)(5) for the presumption rule that shall apply to amounts treated as made to a foreign intermediary or flow-through entity (by substituting the term ''payor'' for the term ''withholding agent''). For example, where a withholdable payment is made to an intermediary under § 1.1471–3 that is treated as a nonparticipating FFI under § 1.1471–3(f)(5), the nonparticipating FFI shall be treated as the payee under § 1.1471–3(c)(3) and for purposes of this paragraph (d)(3)(i), therefore, no information return shall be required under this section.

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Code and that are not withholdable payments.* Except as provided in paragraph (d)(3)(iii) of this section, amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments that the payor may treat as paid to a foreign intermediary or flow-through entity shall be treated as made to an exempt recipient described in § 1.6049–4(c) except to the extent that the payor has actual knowledge that any person for whom the intermediary or flow-through entity is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient and has actual knowledge of the amount allocable to such a person.

(iii) *Special rule for payments of certain short-term original issue discount*—(A) *General rule.* A payment of U.S. source bank deposit interest not subject to chapter 4 withholding or U.S. source interest or original issue discount on the redemption of an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in section 871(g)(1)(B) or 881(e) that the payor may treat as paid to a foreign intermediary or flow-through entity in accordance with the provisions of § 1.1441–1(b)(3)(ii)(C), (b)(3)(v)(A), § 1.1441–5(d) or (e) (by substituting the term ''payor'' for the term ''withholding agent''), shall be treated as paid to an undocumented U.S. payee that is not an exempt recipient under paragraph § 1.6049–4(c) unless the payor has documentation from the payees of the payment and the payment is allocated to foreign payees, as a group, and to each U.S. non-exempt recipient payee. See § 1.1441–1(e)(3)(iv)(C)(*2*). However, a payor may rely on a withholding statement provided by an intermediary described in § 1.1441–1(e)(3)(iv) (or similar withholding statement for a flow-through entity) that identifies a chapter 4 withholding rate pool of U.S. payees (as described in § 1.6049–4(c)(4)(iii)) only if it identifies the foreign intermediary or flow-through entity as a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) under § 1.1471–3(d)(4) (by substituting the term ''payor'' for the term ''withholding agent''). See also § 1.6049–4(c)(4)(iii) for when an FFI may provide a chapter 4 withholding rate pool of U.S. payees on a withholding statement.

* * * * *

(4) *Examples.* The rules of paragraphs (d)(1) through (3) of this section are illustrated by the examples in this paragraph (d)(4). Unless otherwise specified in an example, the following facts apply: all FFIs, such as a nonqualified intermediary that is an FFI, are treated as participating FFIs; all payees have been identified with chapter 4 statuses that do not require withholding under chapter 4; and none of the payments are withholdable payments.

Example 1. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays interest from sources within the United States that is a withholdable payment to an account maintained in the United States by X. The interest is not deposit interest described in sections 871(i)(2)(A) or 881(d). USP does not have a Form W–9, or withholding certificate from X as defined in § 1.1441–1(c)(16). Moreover, USP cannot treat X as an exempt recipient, as defined in § 1.6049–4(c)(1)(ii), without documentation and there is no indication that X is an individual, trust, or estate.

(ii) *Analysis.* The U.S. source interest is an amount subject to withholding as defined in § 1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee of the interest. Under

§ 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5 apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The presumption of U.S. status applies even though the payment is a withholdable payment (see paragraph (d)(2) of this section and § 1.1471–3(f)(2) cross referencing the presumption rules of § 1.1441–1(b)(3)). The U.S. source interest paid to X is reportable under section 6049 on Form 1099 and the interest is subject to backup withholding under section 3406 because X has not provided its TIN on a valid Form W–9. No withholding or reporting applies to the payment under chapter 3 or 4 of the Code.

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that the interest paid by USP is from sources outside the United States.

(ii) *Analysis.* Interest from sources outside the United States is not an amount subject to withholding, as defined in § 1.1441–2(a) or a withholdable payment. Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. These rules apply irrespective of whether the payment is an amount subject to withholding. Under § 1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The foreign source interest is a payment subject to reporting on Form 1099 under § 1.6049–5(a). Further, because X is a non-exempt recipient that has failed to provide its TIN on a valid Form W–9, the foreign source interest is subject to backup withholding under section 3406.

Example 3. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment of U.S. source interest outside the United States to an offshore account of X. See paragraphs (c)(1) for a definition of offshore account and (e) for a payment outside the United States. USP does not have a withholding certificate from X as defined in § 1.1441–1(c)(16) nor does it have documentary evidence as described in § 1.1441–1(e)(1)(ii)(A)(*2*) and § 1.6049–5(c)(1).

(ii) *Analysis.* The interest is an amount subject to withholding as defined in § 1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of § 1.1441–1(b)(2) and § 1.1441–5(c) and (e) to determine the payee. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441–1(b)(3)(iii)(D) and 1.1441–5(d)(2), X is presumed to be a foreign partnership. Therefore, under paragraph (d)(1) of this section and § 1.1441–5(c)(1)(i)(E), the payees of the interest are presumed to be the partners of X. Under § 1.1441–5(d)(3), the partners are presumed to be undocumented foreign persons. Therefore, USP must withhold 30% of the interest payment under § 1.1441–1(b)(1) and report the payment on Form 1042–S in accordance with § 1.1461–1(c).

Example 4. (i) *Facts.* The facts are the same as in *Example 3,* except that the interest is paid by F, a non-U.S. payor.

(ii) *Analysis.* The analysis and result are the same as in *Example 3.* F is a withholding agent under § 1.1441–7 and its status as a non-U.S. payor under paragraph (c)(5) of this section is irrelevant.

Example 5. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section that is not an FFI. USP makes a payment outside the United States of interest from sources outside the United States with respect to an offshore obligation held by X. USP does not have a withholding certificate from X as defined in § 1.1441–1(c)(16) nor does it have documentary evidence as described in §§ 1.1471–3(c)(5)(i) and 1.6049–5(c)(1). USP does not have actual knowledge of an employer identification number for X. X does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient, as defined in § 1.6049–4(c)(1)(ii) in the absence of documentation.

(ii) *Analysis.* The interest is not an amount subject to withholding as defined in § 1.1441–2(a) and is not a withholdable payment. Under paragraph (d)(1) of this section, USP must apply the rules of §§ 1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee of the interest. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, § 1.1441–1(b)(3)(ii) applies to determine X's classification as an individual, trust, estate, corporation or partnership. Under § 1.1441–1(b)(3)(ii)(B), X is treated as a partnership, since it does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient without documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Paragraph (d)(2)(i) of this section also states that the presumptions of foreign status for payments made with respect to offshore obligations contained in §§ 1.1441–1(b)(3)(iii)(D) and 1.1441–5(d)(2) do not apply to amounts that are not subject to withholding and that are not withholdable payments described in paragraph (d)(2)(i). Therefore, under §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership because it does not have actual knowledge that X's employer identification number begins with the digits ''98.'' Therefore, USP must treat X as a U.S. person that is not an exempt recipient and report the payment on Form 1099 under section 6049. Under § 31.3406(g)–1(e) of this chapter, however, USP is not required to backup withhold on the payment unless it has actual knowledge that X is a U.S. person that is not an exempt recipient.

Example 6. (i) *Facts.* The facts are the same as in *Example 5,* except that the interest is paid by F, a non-U.S. payor, as defined under paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis is the same as under *Example 5.* However, F is a non-U.S. payor paying foreign source interest outside the United States, and there is no indication that the amount is received in the United States under § 1.6049–4(f)(16). Thus, paragraph (b)(6) of this section exempts the payment from reporting under section 6049.

Example 7. (i) *Facts.* USP, a U.S. payor as defined in paragraph (c)(5) of this section that is not an FFI, makes a payment of U.S. source interest that is a withholdable payment to NQI, a nonqualified intermediary as defined in § 1.1441–1(c)(14), that is a certified deemed-compliant FFI under § 1.1471–5(f)(2). The interest is paid inside the United States to an account of a bank or other financial institution maintained in the United States. NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441–1(e)(3)(iii) that includes its chapter 4 status, but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441–1(e)(3)(iv).

(ii) *Analysis.* U.S. source interest is an amount subject to withholding under § 1.1441–2(a). USP may treat the payment as

made to a foreign intermediary under § 1.1441–1(b)(3)(v)(A) because USP has received a nonqualified intermediary withholding certificate from NQI and may except NQI from withholding under chapter 4 of the Code given NQI's status for chapter 4 purposes as a deemed-compliant FFI. Under paragraph (d)(3)(i) of this section, USP must then apply § 1.1471–3(c)(3) to treat the persons on whose behalf NQI is acting as the payees. Paragraph (d)(3)(i) of this section also requires USP to apply the presumption rules of § 1.1441–1(b)(3)(v) if it cannot reliably associate the payment with valid documentation from a payee. See § 1.1441–1(b)(2)(vii). As the payment is a withholdable payment, the interest is treated as paid to a nonparticipating FFI under § 1.1471–3(f)(4). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section. See § 1.1471–2(a) for the withholding requirement with respect to the payment and § 1.1474–1(d)(2) for the requirement to report the payment on Form 1042–S.

Example 8. (i) *Facts.* The facts are the same as in *Example 7,* except that the interest is paid outside the United States, as defined in paragraph (e) of this section to an offshore account, as defined in paragraph (c)(1) of this section and is not a withholdable payment.

(ii) *Analysis.* Under § 1.1441–1(b)(3)(v)(B), the interest is treated as paid to an unknown foreign payee because it cannot be reliably associated with documentation under § 1.1441–1(b)(2)(vii). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section because the payment is presumed made to a foreign person. The payment is subject to withholding, however, under § 1.1441–1(b) at a rate of 30% and is subject to reporting on Form 1042–S under § 1.1461–1(c).

Example 9. (i) *Facts.* The facts are the same as in *Example 8,* except that the interest is paid by F, a non-U.S. payor, as defined in paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 8.*

Example 10. (i) *Facts.* USP, a U.S. payor as defined in paragraph (c)(5) of this section, makes a payment of foreign source interest (other than deposit interest) to NQI, a foreign corporation and a nonqualified intermediary as defined in § 1.1441–1(c)(14). NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441–1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441–1(e)(3)(iv).

(ii) *Analysis.* Foreign source interest is not an amount subject to withholding under chapter 3 of the Code and is not a withholdable payment. See §§ 1.1441–2(a) and 1.1473–1(a). Under paragraph (d)(3)(ii) of this section, amounts that are not subject to withholding under chapter 3 of the Code and that are not withholdable payments described in paragraph (d)(2)(i) of this section that a payor may treat as paid to a foreign intermediary are treated as made to an exempt recipient described in § 1.6049–4(c) absent actual knowledge that the payee is a U.S. person who is not an exempt recipient. Therefore, the foreign source interest is not subject to reporting on Form 1099.

Example 11. (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section that is a bank. USP pays U.S. source original issue discount from the redemption of an obligation described in section 871(g)(1)(B) to NQI, a foreign corporation that is a nonqualified intermediary as defined in § 1.1441–1(c)(14). The redemption proceeds are not paid outside of the United States as they are paid with respect to an account NQI has with a branch of a bank in the United States. See § 1.6049–5(e)(2). NQI provides a nonqualified intermediary withholding certificate as described in § 1.1441–1(e)(3)(iii) that includes a certification of its status as a registered deemed-compliant FFI but does not attach any payee documentation or a withholding statement described in § 1.1441–1(e)(3)(iv).

(ii) *Analysis.* Under paragraph (d)(3)(ii)(A) of this section, USP must treat the payment as made to an undocumented U.S. payee that is not an exempt recipient and report the payment on Form 1099. Further, because the payment is made inside the United States, the exception to backup withholding with respect to offshore obligations contained in § 31.3406(g)–1(e) of this chapter does not apply, and the payment is subject to backup withholding.

Example 12. (i) *Facts.* P, a payor, makes a payment to NQI of U.S. source interest on debt obligations issued prior to July 18, 1984, that mature 30 years from their issuance dates. Therefore, the interest does not qualify as portfolio interest under section 871(h) or 881(d). Additionally, the interest is not a withholdable payment under § 1.1471–2(b) as the interest is a payment with respect to a grandfathered obligation for purposes of chapter 4 of the Code. NQI, a U.S. payor, is a nonqualified foreign intermediary, as defined in § 1.1441–1(c)(14), and has furnished P a valid nonqualified intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it has attached a valid Form W–9 for A, and two valid beneficial owner Forms W–8, one for B and one for C. A is not an exempt recipient under § 1.6049–4(c). NQI furnishes a withholding statement, described in § 1.1441–1(e)(3)(iv), in which it allocates 20% of the U.S. source interest to A, but does not allocate the remaining 80% of the interest between B and C. B's withholding certificate indicates that B is a foreign pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate indicates that C is a foreign corporation not entitled to a reduced rate of withholding.

(ii) *Analysis.* As the interest is not a withholdable payment under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441–1(b)(2)(v) to determine the payees of the interest even though NQI has not certified its status for purposes of chapter 4 of the Code. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 20% of the payment with valid documentation provided by A, P must treat 20% of the interest as paid to A, a U.S. person not exempt from reporting, and report the payment on Form 1099. P cannot reliably associate the remaining 80% of the payment with valid documentation under § 1.1441–1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441–1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441–1(b), 80% of the interest is subject to 30% withholding, however, and the interest is reportable on Form 1042–S under § 1.1461–1(c).

Example 13. (i) *Facts.* The facts are the same as in *Example 12,* except that P can reliably associate 30% of the payment of interest to B, but cannot reliably associate the remaining 70 percent with A or C.

(ii) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441–1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 30% of the payment with B, a foreign pensions fund exempt from withholding under an income tax treaty, P may treat that payment as paid to B and not subject to reporting on Form 1099 under paragraph (b)(12) of this section. P cannot reliably associate the remaining 70% of the payment with valid documentation under § 1.1441–1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441–1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441–1(b), 80% of the interest is subject to 30% withholding, however, and the interest is reportable on Form 1042–S under § 1.1461–1(c).

Example 14. (i) *Facts.* The facts are the same as in *Example 12,* except that P also makes a payment of foreign source interest to NQI.

(ii) *Analysis.* Under paragraph (d)(3)(ii), P may treat the foreign source interest as paid to an exempt recipient as defined in § 1.6049–4(c) and not subject to reporting on Form 1099 even though some or all of the foreign source interest may in fact be owned by A, the U.S. person that is not exempt from reporting.

Example 15. (i) *Facts.* The facts are the same as in *Example 12,* except that NQI is a non-U.S. payor.

(ii) *Analysis.* The analysis is the same as under *Example 12* with respect to B and C. However, because NQI is a non-U.S. payor, it may under § 1.6049–4(c)(4)(iii) allocate the portion of the payment to A to a chapter 4 withholding rate pool of U.S. payees on a withholding statement provided to P in lieu of furnishing the Form W–9 to P when NQI reports the payments in accordance with § 1.6049–4(c)(4)(i). In such a case, provided that P obtains a certification form confirming NQI's status as a participating FFI, P is excepted from reporting the payment under paragraph (b)(14) of this section because P

can reliably associate the payment with the documentation provided by NQI.

(e) *Determination of whether amounts are considered paid outside the United States*—(1) *In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. See paragraphs (e)(2) through (5) of this section for further clarification of where amounts are considered paid. A payment shall not be considered to be made within the United States for purposes of section 6049 merely by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(2) *Amounts paid with respect to deposits or accounts with banks and other financial institutions.* Notwithstanding paragraph (e)(1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless the branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business; the business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal business hours; and the branch or office receives deposits and engages in one or more of the other activities described in § 1.864–4(c)(5)(i).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding paragraph (e)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment.

(4) *Foreign-targeted registered obligations.* Notwithstanding paragraph (e)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation issued before January 1, 2016, as described in § 1.871–14(e)(2), if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. For purposes of this paragraph (e)(4), the term *international account* means the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identify an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) as either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a public international organization of which the United States is a member to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from tax under section 892 or 895.

(5) *Examples.* The application of the provisions of this paragraph (e) is illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (c)(5) of this section. A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations thereunder. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays A with a check drawn against a bank account maintained in the United States. For purposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (e)(3) of this section.

Example 2. Individual C deposits funds in an account with FB, a foreign country X branch of DB, a U.S. corporation engaged in the commercial banking business. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in § 1.864–4(c)(5)(i). The terms of C's deposit provide that it will be payable with accrued interest. Under paragraph (e)(2) of this section, FB is considered to pay the interest on C's deposit outside the United States.

Example 3. DC, a U.S. corporation engaged in the commercial banking business, maintains FB, a branch in foreign country X. FB has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in § 1.864–4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by FB. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable at six-month intervals. D presents some of the coupons at the U.S. office of DC and receives payment in cash. Because the coupon is presented to DC for payment within the United States, DC is considered to have made the payment within the United States under paragraph (e)(3) of this section.

Example 4. FB is recognized by both foreign country X and by the Federal Reserve Bank as a foreign country X branch of DC, a U.S. corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (e)(1) and (e)(2) of this section.

Example 5. DC is a U.S. corporation. A holds bonds that were issued by DC in registered form under section 163(f), as in effect prior to the amendment by section 502 of the HIRE Act of 2010, and the regulations thereunder and that are foreign-targeted registered obligations as defined in § 1.871–14(e)(2). DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DC bonds is paid to A and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to A's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to A by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (e)(4) of this section.

* * * * *

(g) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. 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.)

§ 1.6049–5T [Removed]

■ **Par. 36.** Section 1.6049–5T is removed.

■ **Par. 37.** Section 1.6050N–1 is amended by revising (c)(1)(ii) to read as follows:

§ 1.6050N–1 Statements to recipients of royalties paid after December 31, 1986.

* * * * *

(c) * * *

(1) * * *

(ii) Returns of information are not required for payments of royalties from sources outside the United States paid by a non-U.S. payor or non-U.S. middleman and that are paid and received outside the United States. For a definition of non-U.S. payor or non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be paid and received outside the United States, see § 1.6049–4(f)(16).

* * * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 38.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 39.** Section 31.3406(g)–1 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after June 30, 2014, a payor is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States (as defined in § 1.6049–4(f)(16)) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1)) or on gross proceeds from a sale effected outside the United States (as defined in § 1.6045–1(g)(3)(iii)), unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required on a reportable payment of an amount already withheld upon by a participating FFI (as defined in § 1.1471–1(b)(91)) or another payor in accordance with the withholding provisions under chapter 3 or 4 of the Code and the regulations under those chapters even if the payee is a known U.S. person. For example, a participating FFI is not required to backup withhold on a reportable payment allocable to its chapter 4 withholding rate pool (as defined in § 1.6049–4(f)(5)) of recalcitrant account holders (as described in § 1.6049–4(f)(11)), if withholding was applied to the payment (either by the participating FFI or another payor) pursuant to § 1.1471–4(b) or § 1.1471–2(a). For rules applicable to notional principal contracts, see § 1.6041–1(d)(5) of this chapter. For rules applicable to reportable payments made before July 1, 2014, see this paragraph (e) as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(f) *Effective/applicability date.* This section applies on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016).

§ 31.3406(g)–1T [Removed]

■ **Par. 40.** Section 31.3406(g)–1T is removed.

■ **Par. 41.** Section 31.3406(h)–2 is amended by revising paragraph (a)(3)(i) and adding paragraph (i) to read as follows:

§ 31.3406(h)–2 Special rules.

(a) * * *

(3) * * *

(i) *In general.* If the relevant payee listed on a jointly owned account or instrument provides a Form W–8 or documentary evidence described in § 1.1441–1(e)(1)(ii) regarding its foreign status, withholding under section 3406 applies unless every joint payee provides the statement regarding foreign status (under the provisions of chapters 3 or 61 of the Internal Revenue Code and the regulations under those provisions); any one of the joint owners who has not established foreign status provides a taxpayer identification number to the payor in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5; or, in the case of a withholdable payment (as defined in § 1.6049–4(f)(15)), any joint payee does not appear to be an individual as described in § 1.1471–3(f)(7). See § 1.6049–5(d)(2)(iii) of this chapter for corresponding joint payees provisions.

* * * * *

(i) *Effective/applicability date.* This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016.)

§ 31.3406(h)–2T [Removed]

■ **Par. 42.** Section 31.3406(h)–2T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 43.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 44.** Section 301.6402–3 is amended by revising paragraphs (e) and (f) to read as follows:

§ 301.6402–3 Special rules applicable to income tax.

* * * * *

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapters 3 or 4 of the Internal Revenue Code (Code). Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 or 4 of the Code, a copy of the Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' or other statement (required under § 1.1446–3(d)(2) of this chapter) required to be provided to the beneficial owner or partner pursuant to § 1.1461–1(c)(1)(i), § 1.1474–1(d)(1)(i), or § 1.1446–3(d) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 8805 or other statement must include the taxpayer identification number of the beneficial owner or partner even if not otherwise required. No claim for refund or credit under chapter 65 of the Code may be made by the taxpayer for any amount that the payor has repaid to the taxpayer pursuant to reimbursement or set-off procedures (described in § 1.1461–2(a)(2),(3) or § 1.1474–2(a)(3), (4) of this chapter). In addition, no claim for refund or credit may be made by a taxpayer for any amount that has been repaid to a qualified intermediary (as described in § 1.1441–1(e)(5)(ii)) or a participating FFI (as described in § 1.1471–1(b)(91)) pursuant to a collective refund filed by such entity on behalf of the taxpayer. See § 1.1441–1(e)(5)(iii) (describing a qualified intermediary agreement) and § 1.1471–4(h) (describing a collective refund). Upon request, a taxpayer must also submit such documentation as the IRS, may require establishing that the taxpayer is the beneficial owner of the income for which a claim for refund or credit is being made and verifying the grounds and facts set forth in taxpayer's claim as required by § 301.6402–2(b)(1). See § 1.1474–5 for additional requirements that may apply in the case of a refund of tax withheld under chapter 4.

(f) *Effective/applicability date*—(1) Except as provided in paragraph (f)(2) of this section, this section applies on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in

effect and contained in 26 CFR part 1, revised April 1, 2016.)

(2) References in paragraph (e) of this section to Form 8805 or other statements required under § 1.1446–3(d)(2) shall apply to partnership taxable years beginning after April 29, 2008. References in paragraph (e) of this section to amounts withheld under chapter 4 of the Code and claims made with respect to amounts withheld under chapter 4 of the Code shall apply to withholdable payments made after June 30, 2014.

§ 301.6402–3T [Removed]

■ **Par. 46.** Section 301.6402–3T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: December 22, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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