

Part III - Administrative, Procedural, and Miscellaneous

Applicability Date of Certain Regulations Under Sections 1446(a) and (f)

Notice 2021-51

I. PURPOSE

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to amend the regulations under sections 1446(a) and 1446(f) to defer the applicability date to January 1, 2023 for certain provisions relating to the following: (i) withholding under section 1446(f) on transfers of interests in publicly traded partnerships (“PTP interests”); (ii) withholding under section 1446(a) on distributions made with respect to PTP interests; and (iii) withholding under section 1446(f)(4) by partnerships on distributions to transferees. Before the issuance of these amendments, taxpayers may rely on the provisions of this notice regarding the modified applicability dates.

II. BACKGROUND

Sections 864(c)(8) and 1446(f) were added to the Code by the Tax Cuts and Jobs Act, Pub. L. 115-97 on December 22, 2017. Section 864(c)(8) generally provides that gain or loss derived by a foreign person on the sale or exchange of an interest in a partnership engaged in a U.S. trade or business is treated as effectively connected gain or loss and, therefore, is subject to U.S. tax. Section 1446(f)(1) requires a transferee of

an interest in a partnership to withhold 10 percent of the amount realized if any portion of the gain on the disposition would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States (unless an exception applies). Section 1446(f)(4) provides that if a transferee fails to withhold on the disposition as required under section 1446(f)(1), the partnership must withhold on distributions to the transferee.

On November 30, 2020, the Treasury Department and the IRS published final regulations (TD 9926) in the Federal Register (85 FR 76910, as corrected at 86 FR 13191) primarily relating to withholding and information reporting under section 1446(f). The final regulations include withholding and reporting requirements under section 1446(f)(1) applicable to brokers effecting transfers of PTP interests on behalf of foreign persons. The final regulations also require a broker that pays an amount realized to a foreign broker to withhold on the amount realized, unless the foreign broker is a qualified intermediary (QI) (or a U.S. branch treated as a U.S. person) that assumes primary withholding responsibility under section 1446(f)(1). The final regulations modify certain rules in §1.1446-4, which previously permitted only a publicly traded partnership or a U.S. person to be the withholding agent, to allow a QI (or a U.S. branch treated as a U.S. person) to assume withholding on distributions with respect to PTP interests under section 1446(a), in part to coordinate with withholding requirements under section 1446(f)(1). Under the final regulations, a QI that assumes withholding on a distribution under section 1446(a) must also assume withholding on the distribution under section 1446(f). The final regulations also provide rules under section 1446(f)(4) for withholding and reporting by partnerships (other than publicly traded partnerships) making

distributions to transferees of partnership interests who failed to withhold as required under section 1446(f)(1). The provisions of the final regulations described in this paragraph apply to transfers and distributions that occur on or after January 1, 2022.

III. AMENDED APPLICABILITY DATES

Following the publication of the final regulations, the Treasury Department and the IRS received comments noting that taxpayers will face significant challenges complying with certain provisions of the final regulations by January 1, 2022, and requesting a deferred applicability date. These challenges include the following: designing, building, and testing new withholding and reporting infrastructure; analyzing new forms and withholding statements; and implementing systems to capture required data. Brokers that are qualified intermediaries (and U.S. branches treated as U.S. persons) have the additional challenge of implementing systems and processes to withhold and report under section 1446(a) as well as section 1446(f).

In consideration of the concerns raised by taxpayers, and to allow for an orderly implementation of the requirements of section 1446(f) with respect to PTP interests, the Treasury Department and the IRS intend to amend certain applicability dates of the final regulations (primarily the applicability date in §1.1446(f)-4(f)) to provide that the provisions relating to withholding and reporting on transfers of PTP interests under section 1446(f)(1) will apply to transfers that occur on or after January 1, 2023. The Treasury Department and the IRS also intend to amend the applicability date of the modifications to §1.1446-4 listed in §1.1446-7 to apply to distributions with respect to PTP interests made on or after January 1, 2023. The modified applicability date for these provisions will then align with the modified applicability date for withholding and

reporting under section 1446(f)(1) with respect to PTP interests. In addition, in order to allow for an orderly implementation of the withholding and reporting requirements for partnerships under section 1446(f)(4), the Treasury Department and the IRS intend to amend the applicability date in §1.1446(f)-3(f) so that the provisions of the final regulations requiring partnerships to withhold under section 1446(f)(4) will apply to transfers that occur on or after January 1, 2023.

IV. DRAFTING INFORMATION

The principal author of this notice is Charles Rioux of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Mr. Rioux at (202) 317-4992 (not a toll-free call).