

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 9658]

RIN 1545-BL18

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; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9658), which were published in the **Federal Register** on Thursday, March 6, 2014 (79 FR 12726). The regulations relate to the 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.

DATES: Effective Date: These corrections are effective on **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**, and are applicable on March 6, 2014.

FOR FURTHER INFORMATION CONTACT: John Sweeney, (202) 317-6942 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

### **Background**

This document contains amendments to the Income Tax Regulations (26 CFR

part 1) under sections 871, 1441, 1461, 6041, and 6049 of the Code and the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Code. The final and temporary regulations that are the subject of these corrections are §§1.871-14, 1.871-14T, 1.1441-1, 1.1441-1T, 1.1441-5T, 1.1441-6T, 1.1441-7T, 1.1461-1, 1.1461-1T, 1.6041-1, 1.6049-4T, 1.6049-5T, 31.3406(g)-1T, and 31.3406(h)-2T. These regulations affect persons making payments of U.S. source income to foreign persons, persons making payments to certain U.S. persons subject to reporting and backup withholding, and foreign persons claiming the exclusion from tax provided for portfolio interest.

### **Need for Correction**

As published, the final and temporary regulations contain a number of items that need to be corrected or clarified. Several citations and cross references are corrected. The correcting amendments also include the addition, deletion, or modification of regulatory language to clarify the relevant provisions to meet their intended purposes or for consistency with other related provisions of these regulations. The addition of final regulatory language only includes language that was inadvertently removed in the final and temporary regulations.

### **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.

## Correction of Publication

Accordingly, 26 CFR parts 1 and 31 are corrected by making the following correcting amendments:

### 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 (c)(2) through (c)(3)(i) to 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.

\* \* \* \* \*

(c) \* \* \*

(2) through (c)(2)(iv) [Reserved]. For further guidance, see §1.871-14T(c)(2) through (c)(2)(iv).

(v) The U.S. person receives a statement from a securities clearing organization, a bank, or another financial institution that holds customers' securities in the ordinary course of its trade or business. In such case the statement must be signed under penalties of perjury by an authorized representative of the financial institution and must state that the institution has received from the beneficial owner a withholding certificate described in §1.1441-1(e)(2)(i) (a Form W-8 or an acceptable substitute form as defined §1.1441-1(e)(4)(vi)) or that it has received from another financial institution a similar statement that it, or another financial institution acting on behalf of the beneficial owner, has received the Form W-8 from the beneficial owner. In the case of multiple financial

institutions between the beneficial owner and the U.S. person, this statement must be given by each financial institution to the one above it in the chain. No particular form is required for the statement provided by the financial institutions. However, the statement must provide the name and address of the beneficial owner, and a copy of the Form W-8 provided by the beneficial owner must be attached. The statement is subject to the same rules described in §1.1441-1(e)(4) that apply to intermediary Forms W-8 described in §1.1441-1(e)(3)(iii). If the information on the Form W-8 changes, the beneficial owner must so notify the financial institution acting on its behalf within 30 days of such changes, and the financial institution must promptly so inform the U.S. person. This notice also must be given if the financial institution has actual knowledge that the information has changed but has not been so informed by the beneficial owner. In the case of multiple financial institutions between the beneficial owner and the U.S. person, this notice must be given by each financial institution to the institution above it in the chain.

(vi) The U.S. person complies with procedures that the U.S. competent authority may agree to with the competent authority of a country with which the United States has an income tax treaty in effect.

(3) [Reserved]. For further guidance, see §1.871-14T(c)(3).

(i) [Reserved]. For further guidance, see §1.871-14T(c)(3)(i).

\* \* \* \* \*

Par. 3. Section 1.871-14T is amended by adding paragraphs (c)(2)(v) and (vi) to read as follows:

§1.871-14T Rules relating to repeal of tax on interest of nonresident alien individuals

and foreign corporations received from certain portfolio debt investments (temporary).

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) and (vi) [Reserved]. For further guidance, see §1.871-14(c)(2)(v) and (vi).

\* \* \* \* \*

Par. 4. Section 1.1441-1 is amended by revising paragraph (b)(2)(vii) and the introductory text of paragraph (e)(4)(ii)(B) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) Rules for reliably associating a payment with a withholding certificate or other appropriate documentation--(A) Generally. The presumption rules of paragraph (b)(3) of this section and §§1.1441-5(d) and (e)(6) and 1.6049-5(d) apply to any payment, or portion of a payment, that a withholding agent cannot reliably associate with valid documentation. Generally, a withholding agent can reliably associate a payment with valid documentation if, prior to the payment, it holds valid documentation (either directly or through an agent), it can reliably determine how much of the payment relates to the valid documentation, and it has no actual knowledge or reason to know that any of the information, certifications, or statements in, or associated with, the documentation are incorrect. Special rules apply for payments made to intermediaries,

flow-through entities, and certain U.S. branches. See paragraph (b)(2)(vii)(B) through (F) of this section. The documentation referred to in this paragraph (b)(2)(vii) is documentation described in paragraphs (c)(16) and (17) of this section upon which a withholding agent may rely to treat the payment as a payment made to a payee or beneficial owner, and to ascertain the characteristics of the payee or beneficial owner that are relevant to withholding or reporting under chapter 3 of the Internal Revenue Code and the regulations thereunder. A withholding agent that is not required to obtain documentation with respect to a payment is considered to lack documentation for purposes of this paragraph (b)(2)(vii). For example, a withholding agent paying U.S. source interest to a person that is an exempt recipient, as defined in §1.6049-4(c)(1)(ii), is not required to obtain documentation from that person in order to determine whether an amount paid to that person is reportable under an applicable information reporting provision under chapter 61 of the Internal Revenue Code. The withholding agent must, however, treat the payment as made to an undocumented person for purposes of chapter 3 of the Internal Revenue Code. Therefore, the presumption rules of paragraph (b)(3)(iii) of this section apply to determine whether the person is presumed to be a U.S. person (in which case, no withholding is required under this section), or whether the person is presumed to be a foreign person (in which case 30-percent withholding is required under this section). See paragraph (b)(3)(v) of this section for special reliance rules in the case of a payment to a foreign intermediary and §1.1441-5(d) and (e)(6) for special reliance rules in the case of a payment to a flow-through entity.

(B) through (F) [Reserved]. For further guidance, see §1.1441-1T(b)(2)(vii)(B) through (F).

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(ii) \* \* \*

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

\* \* \* \* \*

Par. 5. Section 1.1441-1T is amended by:

1. Correcting the language “§1.1471-1(b)(16)” in the eighth sentence of paragraph (b)(2)(iv)(A) to read “§1.1471-1(b)(18)”.
2. Correcting the language “paragraphs (e)(5)(iv)(C)(1) and (2)” in the last sentence of paragraph (b)(2)(vii)(C)(1) to read “paragraphs (e)(5)(v)(C)(1) and (2)”.
3. Revising paragraphs (e)(2)(ii), (e)(3)(ii)(A), (e)(3)(ii)(D), (e)(3)(iii)(A), (e)(3)(iii)(D), (e)(3)(iv)(C)(2)(i), (e)(3)(iv)(C)(2)(iv), (e)(3)(iv)(D)(2)(ii).
4. Correcting the language “paragraph (c)(3)(iv)(D)(2)(ii)” in the first sentence of paragraph (e)(3)(iv)(D)(3) to read “paragraph (e)(3)(iv)(D)(2)(ii)”.
5. Correcting the language “§1.1471-1(d)(2)” in the last sentence of paragraph (e)(3)(iv)(D)(6) to read “§1.1474-1(d)(2)”.
6. Revising paragraphs (e)(3)(v)(A), (e)(3)(v)(C), (e)(3)(v)(D), (e)(4)(ii)(B) introductory text, (e)(4)(ii)(B)(2), and (e)(4)(ix)(C)(1).
7. At the end of paragraphs (e)(4)(iv)(C) and (e)(4)(ix)(D), adding the language “Notwithstanding the effective date of this section, the provisions of this paragraph apply for payments made on or after March 6, 2014.”
8. Revising paragraphs (e)(5)(ii)(A), (e)(5)(iv), (e)(5)(v)(C)(1), and

(e)(5)(v)(C)(2)(i).

The revisions read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) Requirements for validity of certificate. 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.

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

(A) The name, permanent residence address, qualified intermediary employer identification number (QI-EIN), and the country under the laws of which the 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, the intermediary should provide a nonqualified intermediary withholding certificate, if it is acting as an intermediary, and should use the taxpayer identification number( if any) and GIIN (if applicable) that it uses for all other purposes;

\* \* \* \* \*

(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

\* \* \* \* \*

(iii) \* \* \*

(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;

\* \* \* \* \*

(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

\* \* \* \* \*

(iv) \* \* \*

(C) \* \* \*

(2) \* \* \*

(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 qualified intermediary;

\* \* \* \* \*

(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 (c)(3)(iii)(B)(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.

(D) \* \* \*

(2) \* \* \*

(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).

\* \* \* \* \*

(v) \* \* \*

(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, and, for a withholding certificate provided by a U.S. branch, a certification that the person of which the branch is a part is a participating FFI, registered deemed-compliant FFI, or NFFE;

\* \* \* \* \*

(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

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \*

(B) Indefinite validity period. Notwithstanding paragraph (e)(4)(ii)(A) of this section, the following 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 (12) 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.)

\* \* \* \* \*

(2) A beneficial owner withholding certificate (other than the portion of the certificate making 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 when both are provided together.

\* \* \* \* \*

(ix) \* \* \*

(C) \* \* \*

(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).

\* \* \* \* \*

(5) \* \* \*

(ii) \* \* \*

(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 agreement as eligible to act as a qualified intermediary;

\* \* \* \* \*

(iv) Assignment of primary withholding responsibility. Any 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) (whether a U.S. person or a foreign person) 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 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 Internal Revenue Code and/or under chapter 61 of the Internal Revenue Code and section 3406. 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 to have provided a chapter 4 withholding rate pool of U.S. payees with respect to the payment under §1.6049-4(c)(4)(iii) had the qualified intermediary not assumed these obligations. 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) \* \* \*

(C) \* \* \*

(1) In general. Except to the extent it has assumed both primary withholding responsibility under chapters 3 and 4 of the Internal Revenue Code and primary 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 Internal Revenue 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 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 the agreement described in (e)(5)(iii) of this section.

(2) \* \* \*

(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

\* \* \* \* \*

Par. 6. Section 1.1441-5T is amended by revising paragraphs (c)(2)(iv)(A), (d)(2), (e)(5)(iii)(A), and (e)(6)(ii) to read as follows:

§1.1441-5T Withholding on payments to partnerships, trusts, and estates (temporary).

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(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);

\* \* \* \* \*

(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).

\* \* \* \* \*

(e) \* \* \*

(5) \* \* \*

(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);

\* \* \* \* \*

(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.

\* \* \* \* \*

Par. 7. Section 1.1441-6T is amended by:

1. Revising paragraphs (a) and (b)(1).
2. At the end of paragraph (c)(1), adding the language “Notwithstanding the effective date of this section, the provisions of this paragraph apply for payments made on or after March 6, 2014.”

The revisions read as follows:

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

(a) In general. The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits

are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country. See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See, however, §1.1471-2(a) and §1.1472-1(b) for when withholding at source on a withholdable payment may not be reduced to account for a treaty benefit and the beneficial owner of the payment may need to file a claim for refund to obtain a refund for the overwithheld amount of tax. See also §1.1441-4(b)(2) for rules regarding claims of 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) \* \* \*

(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) and the representations that the beneficial owner derives the income under section 894 and the regulations under section 894, if required, and 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 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.

\* \* \* \* \*

Par. 8. Section 1.1441-7T is amended by revising paragraphs (b)(2), (b)(3)(i), and (b)(11)(ii) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(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) \* \* \*

(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(g)-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.

\* \* \* \* \*

(11) \* \* \*

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

\* \* \* \* \*

Par. 9. Section 1.1461-1 is amended by revising paragraph (i) to read as follows:

§1.1461-1 Payments and returns of tax withheld.

\* \* \* \* \*

(i) Effective/applicability date. (1) Unless otherwise provided in this section, this section shall apply to returns required for payments made after December 31, 2000.

(2) [Reserved]. For further guidance, see §1.1461-1T(i)(2).

Par. 10. Section 1.1461-1T is amended by:

1. Revising paragraphs (c)(1)(ii)(A)(6) and (c)(1)(ii)(B)(1).

2. Correcting the language “(c)(1)(ii)(9) or (c)(1)(ii)(10)” in paragraphs (c)(1)(ii)(B)(3) and (4) to read “(c)(1)(ii)(A)(9) or (c)(1)(ii)(A)(10)”.

3. Revising paragraphs (d) through (i).

The revisions read as follows:

§1.1461-1T Payments and returns of tax withheld (temporary).

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(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;

\* \* \* \* \*

(B) \* \* \*

(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;

\* \* \* \* \*

(d) through (i)(1) [Reserved]. For further guidance, see §1.1461-1(d) through (i)(1).

(2) Unless otherwise provided in this section, this section shall apply to payments made after June 30, 2014.

\* \* \* \* \*

Par. 11. Section 1.6041-1 is amended by adding paragraphs (d)(5)(ii)(A) and (B) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(i) and (ii) \* \* \*

(A) A U.S. payor or U.S. middleman that is not a U.S. person (such as a controlled foreign corporation defined in section 957(a) or certain foreign corporations or foreign partnerships engaged in a U.S. trade or business); or

(B) A foreign branch of a U.S. bank. See §1.6049-5(c)(5) for a definition of a U.S. payor, a U.S. middleman, a non-U.S. payor, and a non-U.S. middleman.

\* \* \* \* \*

Par. 12. Section 1.6049-4T is amended by revising paragraph (c)(4)(i) introductory text and (c)(4)(ii) introductory text to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(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), 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.

\* \* \* \* \*

(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 §1.3406(g)-1(e) and that is made to an account holder of the FFI if the account—

\* \* \* \* \*

Par. 13. Section 1.6049-5T is amended by revising paragraph (b)(14) and paragraph (d)(4) Example 11 to read as follows:

§1.6049-5T Interest and original issue discount subject to reporting after December 31, 1982 (temporary).

\* \* \* \* \*

(b) \* \* \*

(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 with 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.

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*



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.

\* \* \* \* \*

## PART 31--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 14. The authority citation for part 31 continues to read in part as follows:

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

Par. 15. Section 31.3406(g)-1T is amended by revising paragraph (e) to read as follows:

§31.3406(g)-1T Exception for payments to certain payees and certain other payments

(temporary).

\* \* \* \* \*

(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 chapters 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.)

\* \* \* \* \*

Par. 16. Section 31.3406(h)-2T is amended by revising paragraph (i) and adding

paragraph (j) to read as follows:

§31.3406(h)-2T Special rules (temporary).

\* \* \* \* \*

(i) Effective/applicability date. The provisions of paragraph (a)(3)(i) of this section apply to payments made after June 30, 2014. (For payments made before July 1, 2014, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

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

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