

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

Code of Federal Regulations

Title 26. Internal Revenue

Chapter I. INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

Subchapter A. INCOME TAX

Part 1. INCOME TAXES

TAX ON SELF-EMPLOYMENT INCOME

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS AND TAX-FREE COVENANT BONDS

Current through June 26, 2019

§ 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.

(ii) *Payments to a U.S. agent of a foreign person.* A withholding agent making a payment to a U.S. person (other than to a U.S. branch that is treated as a U.S. person pursuant to paragraph (b)(2)(iv) of this section) and who has actual knowledge that the U.S. person receives the payment as an agent of a foreign person must treat the payment as made to the foreign person. However, the withholding agent may treat the payment as made to the U.S. person if the U.S. person is a financial institution and the withholding agent has no reason to believe that the financial institution will not comply with its obligation to withhold. See paragraph (c)(5) of this section for the definition of a financial institution.

(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.

(B) *Foreign entity.* A payment to a wholly-owned foreign entity that is disregarded under §301.7701-2(c)(2) of this chapter as an entity separate from its owner shall be treated as a payment to the single owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section if the foreign entity has a U.S. branch in the United States. For purposes of this paragraph (b)(2)(iii)(B), a foreign entity means a person that would be treated as a foreign person if it had an election in effect under §301.7701-3(c)(1)(i) of this chapter to be treated as a corporation. See §§1.894-1T(d) and 1.1441-6(b)(2) for special rules where the foreign entity or its owner is claiming a reduced rate of withholding under an income tax treaty. Thus, for example, if the foreign entity's single owner is a U.S. person, the payment shall be treated as a payment to a U.S. person. Therefore, based on the saving clause in U.S. income tax treaties, such an entity may not claim benefits under an income tax treaty even if the entity is organized in a country with which the United States has an income tax treaty in effect and treats the entity as a non-fiscally transparent entity. See §1.894-1T(d)(6), *Example 10*. Unless it has actual knowledge or reason to know that the foreign entity to whom the payment is made is disregarded under §301.7701-2(c)(2) of this chapter, a withholding agent may treat a foreign entity as an entity separate from its owner unless it can reliably associate the payment with a withholding certificate from the entity's owner.

(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) *Consequences to the withholding agent.* Any person that is otherwise a withholding agent regarding a payment to a U.S. branch described in paragraph (b)(2)(iv)(A) of this section shall treat the payment in one of the following ways-

- (1) As a payment to a U.S. person, in which case the withholding agent is not responsible for withholding on such payment to the extent it can reliably associate the payment with a withholding certificate described in paragraph (e)(3)(v) of this section that has been furnished by the U.S. branch under its agreement with the withholding agent to be treated as a U.S. person;
 - (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).

- (D) *Definition of payment to a U.S. branch.* A payment is treated as a payment to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (e.g., the check mailed or a letter addressed to the branch).
- (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).

- (v) *Payments to a foreign intermediary-*
 - (A) *Payments treated as made to persons for whom the intermediary collects the payment.* Except as otherwise provided in paragraph (b)(2)(v)(B) of this section, the payee of a payment to a person that the withholding agent may treat as a foreign intermediary in accordance with the provisions of paragraph (b)(3)(ii)(C) or (b)(3)(v)(A) of this section is the person or persons for whom the intermediary collects the payment. Thus, for example, the payee of a payment that the withholding agent can reliably associate with a withholding certificate from a qualified intermediary (defined in paragraph (e)(5)(ii) of this section) that does not assume primary withholding responsibility or a payment to a nonqualified intermediary are the persons for whom the qualified intermediary or nonqualified intermediary acts and not to the intermediary itself. See paragraph (b)(3)(v) of this section for presumptions that apply if the payment cannot be reliably associated with valid documentation. For similar rules for payments to flow-through entities, see §1.1441-5(c)(1) and (e)(3).
 - (B) *Payments treated as made to foreign intermediary.* The payee of a payment to a person that the withholding agent may treat as a qualified intermediary is the qualified intermediary to the extent that the qualified intermediary assumes primary withholding responsibility under paragraph (e)(5)(iv) of this section for the payment. For example if a qualified intermediary assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code but does not assume primary reporting or withholding responsibility under chapter 61 or section 3406 of the Internal Revenue Code and therefore provides Forms W-9 for U.S. non-exempt recipients, the

qualified intermediary is the payee except to the extent the payment is reliably associated with a Form W-9 from a U.S. non-exempt recipient.

- (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) *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) *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.

Ex 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

pl a withholdable payment) to NQI, an intermediary that is a
e nonqualified intermediary. NQI provides a valid
1. 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.

Ex The facts are the same as in *Example 1*, except that NQI
a does attach valid beneficial owner withholding certificates
m (as defined in paragraph (e)(2)(i) of this section) from A,
pl B, C, and D establishing their statuses as foreign
e persons. NQI does not, however, provide WA with any
2. 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.

Ex The facts are the same as in *Example 2*, except that NQI
a provides allocation information associated with its
m intermediary withholding certificate indicating that 25% of
pl the interest payment is allocable to A and 25% to B. NQI
e does not provide any allocation information regarding the
3. 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.

Ex 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 as 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:

Ex 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 1. 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).

Ex 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.

Ex 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.

Ex 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.

(B) *Scholarships and grants.* A payment representing taxable scholarship or fellowship grant income that does not represent compensation for services (but is not excluded from tax under section 117) and that a withholding agent cannot reliably associate with documentation is presumed to be made to a foreign person if the withholding agent has a record that the payee has a U.S. visa that is not an immigrant visa. See section 871(c) and §1.1441-4(c) for applicable tax rate and withholding rules.

(C) *Pensions, annuities, etc.* A payment from a trust described in section 401(a), an annuity plan described in section 403(a), a payment with respect to any annuity, custodial account, or retirement income

account described in section 403(b), or a payment from an individual retirement account or individual retirement annuity described in section 408 that a withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person only if the withholding agent has a record of a Social Security number for the payee and relies on a mailing address described in the following sentence. A mailing address is an address used for purposes of information reporting or otherwise communicating with the payee that is an address in the United States or in a foreign country with which the United States has an income tax treaty in effect and the treaty provides that the payee, if an individual resident in that country, would be entitled to an exemption from U.S. tax on amounts described in this paragraph (b)(3)(iii)(C). Any payment described in this paragraph (b)(3)(iii)(C) that is not presumed to be made to a U.S. person is presumed to be made to a foreign person. A withholding agent making a payment to a person presumed to be a foreign person may not reduce the 30-percent amount of withholding required on such payment unless it receives a withholding certificate described in paragraph (e)(2)(i) of this section furnished by the beneficial owner. For reduction in the 30-percent rate, see §§1.1441-4(e) or 1.1441-6(b).

- (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.
- (E) *Certain payments for services.* A payment for services is presumed to be made to a foreign person if-
 - (1) The payee is an individual;
 - (2) The withholding agent does not know, or have reason to know, that the payee is a U.S. citizen or resident;
 - (3) The withholding agent does not know, or have reason to know, that the income is (or may be) effectively connected with the conduct of a trade or business within the United States; and
 - (4) All of the services for which the payment is made were

performed by the payee outside of the United States.

- (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.
 - (B) If, at the end of the grace period, the documentation is not furnished in the manner required under this section, or if documentation is furnished that does not support the claimed rate reduction, and the account holder is presumed to be a foreign person then adjustments must be made to correct any underwithholding on amounts credited to the account during the grace period, based on the adjustment procedures described in §1.1461-2.
- (v) *Special rules applicable to payments to foreign intermediaries-*
 - (A) *Reliance on claim of status as foreign intermediary.* The presumption rules of paragraph (b)(3)(v)(B) of this section apply to a payment made to an intermediary (whether the intermediary is a qualified or nonqualified intermediary) that has provided a valid withholding certificate under paragraph (e)(3)(ii) or (iii) of this section (or has provided documentary evidence described in paragraph (b)(3)(ii)(C) of this section that indicates it is a bank, broker, custodian,

intermediary, or other agent) to the extent the withholding agent cannot treat the payment as being reliably associated with valid documentation under the rules of paragraph (b)(2)(vii) of this section. For this purpose, a U.S. person's foreign branch that is a qualified intermediary defined in paragraph (e)(5)(ii) of this section shall be treated as a foreign intermediary. A payee that the withholding agent may not reliably treat as a foreign intermediary under this paragraph (b)(3)(v)(A) is presumed to be a payee other than an intermediary whose classification as an individual, corporation, partnership, etc., must be determined in accordance with paragraph (b)(3)(ii) of this section to the extent relevant. In addition, such payee is presumed to be a U.S. or a foreign payee based upon the presumptions described in paragraph (b)(3)(iii) of this section. The provisions of paragraph (b)(3)(v)(B) of this section are not relevant to a withholding agent that can reliably associate a payment with a withholding certificate from a person representing to be a qualified intermediary to the extent the qualified intermediary has assumed primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section.

- (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)).

(viii) *Rebuttal of presumptions.* A payee or beneficial owner may rebut the presumptions described in this paragraph (b)(3) by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(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).

- (B) *Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.* Notwithstanding the provisions of paragraph (b)(3)(ix)(A) of this section, a withholding agent may not rely on the presumptions described in this paragraph (b)(3) to the extent it has actual knowledge or reason to know that the status or characteristics of the payee or of the beneficial owner are other than what is presumed under this paragraph (b)(3) and, if based on such knowledge or reason to know, it should withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (b)(3) or it should report (under this section or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the presumptions described in this paragraph (b)(3). In such a case, the withholding agent must rely on its actual knowledge or reason to know rather than on the presumptions set forth in this paragraph (b)(3). Failure to do so and, as a result, failure to withhold the higher amount or to report the payment, shall result in liability for tax, interest, and penalties to the

extent provided under sections 1461 and 1463 and the regulations under those sections.

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

Ex am ple 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.

Ex am ple 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.

Ex A withholding agent, W, makes a payment of U.S. source dividends am to X, Inc. with respect to an account that X, Inc. opened with W after ple June 30, 2014. W cannot reliably associate the payment to X, Inc. 3. 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.

Ex A withholding agent, W, is a plan administrator who makes pension am payments to person X with a mailing address in a foreign country with ple which the United States has an income tax treaty in effect. Under that 4. 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).
- (ii) Bank deposit interest and similar types of deposit interest (including original

issue discount) described in section 871(i)(2)(A) or 881(d) that are from sources within the United States are exempt from withholding under section 1441(a). See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See §1.6049-5(d)(3)(iii) for exceptions to the foreign payee and exempt recipient rules regarding this type of income. See also §1.6049-5(b)(11) for applicable documentation exemptions for certain bank deposit interest paid on obligations in bearer form.

- (iii) Bank deposit interest (including original issue discount) described in section 861(a)(1)(B) is exempt from withholding under sections 1441(a) as income that is not from U.S. sources. Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. Reporting requirements for payments of such interest are governed by section 6049 and the regulations under that section. See §1.6049-5(b)(12) and alternative documentation rules under §1.6049-5(c)(1).
- (iv) Interest or original issue discount from sources within the United States on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3) is exempt from withholding under sections 1441(a). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See §1.6049-5(b)(12) for applicable documentation for establishing foreign status and §1.6049-5(d)(3)(iii) for exceptions to the foreign payee and exempt recipient rules regarding this type of income. See also §1.6049-5(b)(10) for applicable documentation exemptions for certain obligations in bearer form.
- (v) Income from sources without the United States is exempt from withholding under sections 1441(a). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 or other applicable provisions of chapter 61 of the Code and backup withholding under section 3406. See, for example, §1.6049-5(b) (6) and (12) and alternative documentation rules under §1.6049-5(c). See also paragraph (b)(5) of this section for cross references to other applicable provisions of the regulations under chapter 61 of the Code.

- (vi) Distributions from certain domestic corporations described in section 871(i)(2)(B) or 881(d) are exempt from withholding under section 1441(a). See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6042 and backup withholding under section 3406. See §1.6042-3(b)(1) (iii) through (vi).
- (vii) Dividends paid by certain foreign corporations that are treated as income from sources within the United States by reason of section 861(a)(2)(B) are exempt from withholding under section 884(e)(3) to the extent that the distributions are paid out of earnings and profits in any taxable year that the corporation was subject to branch profits tax for that year. Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6042 and backup withholding under section 3406. See §1.6042-3(b)(1) (iii) through (vii).
- (viii) Certain income that is effectively connected with the conduct of a U.S. trade or business is exempt from withholding under section 1441(a). See section 1441(c)(1). Documentation establishing foreign status and status of the income as effectively connected must be furnished for purposes of this withholding exemption to the extent required under the provisions of §1.1441-4(a). Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of applicable information reporting provisions under chapter 61 of the Code and for backup withholding under section 3406. See, for example, §1.6041-4(a)(1).
- (ix) Certain income with respect to compensation for personal services of an individual that are performed in the United States is exempt from withholding under section 1441(a). See section 1441(c)(4) and §1.1441-4(b). However, such income may be subject to withholding as wages under section 3402. Documentation establishing foreign status must be furnished for purposes of any withholding exemption or reduction to the extent required under §1.1441-4(b) or 31.3401(a)(6)-1 (e) and (f) of this chapter. Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of information reporting under section 6041. See §1.6041-4(a)(1).
- (x) Amounts described in section 871(f) that are received as annuities from certain qualified plans are exempt from withholding under section 1441(a). See section 1441(c)(7). Documentation establishing foreign status must be furnished for purposes of the withholding exemption as required under

§1.1441-4(d). Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of information reporting under section 6041. See §1.6041-4(a)(1).

- (xi) Payments to a foreign government (including a foreign central bank of issue) that are excludable from gross income under section 892(a) are exempt from withholding under section 1442. See §1.1441-8(b). Documentation establishing status as a foreign government is required for purposes of this withholding exemption. Payments to a foreign government are exempt from information reporting under chapter 61 of the Code (see §1.6049-4(c)(1)(ii)(F)).
- (xii) Payments of certain interest income to a foreign central bank of issue or the Bank for International Settlements that are exempt from tax under section 895 are exempt from withholding under section 1442. Documentation establishing eligibility for such exemption is required to the extent provided in §1.1441-8(c)(1). Payments to a foreign central bank of issue or to the Bank for International Settlements are exempt from information reporting under chapter 61 of the Code (see §1.6049-4(c)(1)(ii) (H) and (M)).
- (xiii) Amounts derived by a foreign central bank of issue from bankers') acceptances described in section 871(i)(2)(C) or 881(d) are exempt from tax and, therefore, from withholding. See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is a foreign central bank of issue as defined in §1.861-2(b)(4). See §1.1441-8(c)(2) for withholding procedures. See also §§1.6049-4(c)(1)(ii)(H) and 1.6041-3(q)(8) for a similar exemption from information reporting.
- (xiv) Payments to an international organization from investments in the United) States of stocks, bonds, or other domestic securities or from interest on deposits in banks in the United States of funds belonging to such international organization are exempt from tax under section 892(b) and, thus, from withholding. Documentation establishing status as an international organization is not required if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is an international organization within the meaning of section 7701(a)(18). See §1.1441-8(d). Payments to an international organization are exempt from information reporting under chapter 61 of the Code (see §1.6049-4(c)(1)(ii)(G)).
- (xv) Amounts may be exempt from, or subject to a reduced rate of, withholding

under an income tax treaty. Documentation establishing eligibility for benefits under an income tax treaty is required for this purpose as provided under §1.1441-6. Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of applicable information reporting provisions under chapter 61 of the Code and for backup withholding under section 3406. See, for example, §1.6041-4(a)(1).

- (xvi) Amounts of scholarships and grants paid to certain exchange or training program participants that do not represent compensation for services but are not excluded from tax under section 117 are subject to a reduced rate of withholding of 14-percent under section 1441(b). Documentation establishing foreign status is required for purposes of this reduction in rate as provided under §1.1441-4(c). This income is not subject to information reporting under chapter 61 of the Code nor to backup withholding under section 3406. The compensatory portion of a scholarship or grant is reportable as wage income. See §1.6041-3(o).
- (xvi i) Amounts paid to a foreign organization described in section 501(c) are exempt from withholding under section 1441 to the extent that the amounts are not income includible under section 512 in computing the organization's unrelated business taxable income and are not subject to the tax imposed by section 4948(a). Documentation establishing status as a tax-exempt organization is required for purposes of this exemption to the extent provided in §1.1441-9. Amounts includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding to the extent provided in section 1443(a) and §1.1443-1(a). Gross investment income (as defined in section 4940(c)(2)) of a private foundation is subject to withholding at a 4-percent rate to the extent provided in section 1443(b) and §1.1443-1(b). Payments to a tax-exempt organization are exempt from information reporting under chapter 61 of the Code and the regulations thereunder (see §1.6049-4(c)(1)(ii)(B)(1)).
- (xvi ii) Per diem amounts for subsistence paid by the U.S. government to a nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954 are exempt from withholding under section 1441(a). See section 1441(c)(6). Documentation of foreign status is not required under §1.1441-4(e) for purposes of establishing eligibility for this exemption. See §1.6041-3(p).
- (xix) Interest with respect to tax-free covenant bonds issued prior to 1934 is subject to special withholding procedures set forth in §1.1461-1 in effect prior to January 1, 2001 (see §1.1461-1 as contained in 26 CFR part 1, revised April 1, 1999).

- (xx) Income from certain gambling winnings of a nonresident alien individual is exempt from tax under section 871(j) and from withholding under section 1441(a). See section 1441(c)(11). Documentation establishing foreign status is not required for purposes of this exemption but may have to be furnished for purposes of the information reporting provisions of section 6041 and backup withholding under section 3406. See §§1.6041-1 and 1.6041-4 (a)(1).

- (xxi) Amounts paid with respect to a notional principal contract described in) §1.871-15(a)(7), an equity-linked instrument described in §1.871-15(a)(4), or a securities lending or sale-repurchase transaction described in §1.871-15(a)(13) are exempt from withholding under section 1441(a) as dividend equivalents under section 871(m) if the transaction is not a section 871(m) transaction within the meaning of §1.871-15(a)(12), if the transaction is subject to the exception described in §1.871-15(k), or if the payment is not a dividend equivalent pursuant to §1.871-15(c)(2). However, the amounts may be subject to withholding under section 1441(a) if they are subject to tax under any section other than section 871(m). For purposes of this withholding exemption, it is not necessary for the payee to provide documentation establishing that a notional principal contract or equity-linked instrument has a delta (as described in §1.871-15(g)) that is less than 0.80 or does not have substantial equivalence (as defined in §1.871-15(h)) with the underlying security. For purposes of the withholding exemption regarding corporate acquisitions described in §1.871-15(k), the exemption only applies if the long party furnishes, under penalties of perjury, a written statement to the withholding agent certifying that it satisfies the requirements of §1.871-15(k).

- (xxi) Certain payments to qualified derivatives dealers (as described in i) paragraph (e)(6) of this section). For purposes of this withholding exemption, the qualified derivatives dealer must furnish to the withholding agent the documentation described in paragraph (e)(3)(ii) of this section. A withholding agent that makes a payment to a qualified intermediary that is acting as a qualified derivatives dealer is not required to withhold on the following payments if 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, including the certification described in paragraph (e)(3)(ii)(E):
 - (A) A payment with respect to a potential section 871(m) transaction that is not an underlying security;

(B) A payment of a dividend equivalent; or

(C) A payment of a dividend in 2017.

(xxi) Amounts paid with respect to a potential section 871(m) transaction that is only a section 871(m) transaction as a result of applying §1.871-15(n) to treat certain transactions as combined transactions, if the withholding agent is able to rely on one or more of the presumptions provided in §1.871-15(n)(3)(i) or (ii) (applying those paragraphs whether or not the withholding agent is a short party by substituting "withholding agent" for "short party"), and the withholding agent does not otherwise have actual knowledge that the long party (or a related person within the meaning of section 267(b) or section 707(b)) entered into the potential section 871(m) transaction in connection with any other potential section 871(m) transactions. The ability of one or more withholding agents to rely on the presumptions provided in section 1.871-15(n)(3) does not affect the withholding tax obligations or liability of any party to the transaction that cannot rely on the presumptions. Notwithstanding the withholding exemption provided to the withholding agent in this paragraph (b)(4)(xxii), the long party may still be liable for tax on dividend equivalent amounts with respect to such combined transactions under section 871(m).

(xxi) Any payments not otherwise mentioned in this paragraph (b)(4) shall be subject to withholding at the rate of 30-percent if it is an amount subject to withholding (as defined in §1.1441-2(a)) unless and to the extent the IRS may otherwise prescribe in published guidance (see §601.601(d)(2) of this chapter) or unless otherwise provided in regulations under chapter 3 of the Code.

(5) *Establishing foreign status under applicable provisions of chapter 61 of the Code.* This paragraph (b)(5) identifies relevant provisions of the regulations under chapter 61 of the Code that exempt payments from information reporting, and therefore, from backup withholding under section 3406, based on the payee's status as a foreign person. Many of these exemptions require that the payee's foreign status be established in order for the exemption to apply. The regulations under applicable provisions of chapter 61 of the Code generally provide that the documentation described in this section may be relied upon for purposes of determining foreign status.

(i) Payments to a foreign person that are governed by section 6041 (dealing with certain trade or business income) are exempt from information reporting under §1.6041-4(a).

- (ii) Payments to a foreign person that are governed by section 6041A (dealing with remuneration for services and certain sales) are exempt from information reporting under §1.6041A-1(d)(3).
 - (iii) Payments to a foreign person that are governed by section 6042 (dealing with dividends) are exempt from information reporting under §1.6042-3(b)(1) (iii) through (vi).
 - (iv) Payments to a foreign person that are governed by section 6044 (dealing with patronage dividends) are exempt from information reporting under §1.6044-3(c)(1).
 - (v) Payments to a foreign person that are governed by section 6045 (dealing with broker proceeds) are exempt from information reporting under §1.6045-1(g).
 - (vi) Payments to a foreign person that are governed by section 6049 (dealing with interest) to a foreign person are exempt from information reporting under §1.6049-5(b) (6) through (15).
 - (vii) Payments to a foreign person that are governed by section 6050N (dealing with royalties) are exempt from information reporting under §1.6050N-1(c).
 - (viii) Payments to a foreign person that are governed by section 6050P (dealing with income from cancellation of debt) are exempt from information reporting under section 6050P or the regulations under that section except to the extent provided in Notice 96-61 (1996-2 C.B. 227); see also §601.601(b)(2) of this chapter.
 - (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.

Ex FB, a foreign bank, acts as intermediary for five different individuals, am A, B, C, D, and E, each of whom owns U.S. securities that generate ple U.S. source dividends (that are withholdable payments). The
1. 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.

Ex The facts are the same as in *Example 1*, except that FB did not am provide any information for USWA to determine how much of the

ple dividend payments were made to A, B, C, D, and E. Because USWA
2. 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
 - (D) The withholding agent has complied with the provisions of §1.1441-6(c) or (g).

- (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).

- (iii) *Liability for interest and penalties.* For payments made after December 31, 2000, if a withholding agent fails to deduct and withhold any tax imposed under sections 1441 or 1442, and the tax against which such tax may be credited under section 1462 is paid, then the amount of tax required to be deducted and withheld shall not be collected from the withholding agent. However, the withholding agent is not relieved from liability for interest or any penalties or additions to the tax otherwise applicable in respect of the failure to deduct and withhold. See section 1463. Further, in the event that a tax liability is assessed against the beneficial owner under section 871, 881, or 882 and interest under section 6601(a) is assessed against, and collected from, the beneficial owner, the interest charge imposed on the withholding agent shall be abated to that extent so as to avoid the imposition of a double interest charge.
 - (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).
- (8) *Adjustments, refunds, or credits of overwithheld amounts.* If the amount withheld under section 1441, 1442, or 1443 is greater than the tax due by the withholding agent or the taxpayer, adjustments may be made in accordance with the procedures described in §1.1461-2(a). Alternatively, refunds or credits may be claimed in accordance with the procedures described in §1.1464-1, relating to refunds or credits claimed by the beneficial owner, or §1.6414-1, relating to refunds or credits claimed by the withholding agent. If an amount was withheld under

section 3406 or is subsequently determined to have been paid to a foreign person, see paragraph (b)(3)(vii) of this section and §31.6413(a)-3(a)(1) of this chapter.

(9) *Payments to joint owners.* A payment to joint owners that requires documentation in order to reduce the rate of withholding under chapter 3 of the Code and the regulations thereunder does not qualify for such reduced rate unless the withholding agent can reliably associate the payment with documentation from each owner. Notwithstanding the preceding sentence, a payment to joint owners qualifies as a payment exempt from withholding under this section if any one of the owners provides a certificate of U.S. status on a Form W-9 in accordance with paragraph (d) (2) or (3) of this section or the withholding agent can associate the payment with an intermediary or flow-through withholding certificate upon which it can rely to treat the payment as made to a U.S. payee under paragraph (d)(4) of this section. See §31.3406(h)-2(a)(3)(i)(B) of this chapter.

(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.

(1) *Withholding.* The term *withholding* means the deduction and withholding of tax at the applicable rate from the payment.

(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) *Individual-*

(i) *Alien individual.* The term *alien individual* means an individual who is not a citizen or a national of the United States. See §1.1-1(c).

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

(4) *Certain foreign corporations.* For purposes of this section, a corporation created or organized in Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, is not treated as a foreign corporation if the

requirements of sections 881(b)(1) (A), (B), and (C) are met for such corporation. Further, a payment made to a foreign government or an international organization shall be treated as a payment made to a foreign corporation for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

- (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).
- (6) *Beneficial owner-*
- (i) *General rule.* This paragraph (c)(6) defines the term *beneficial owner* for payments of income other than a payment for which a reduced rate of withholding is claimed under an income tax treaty. The term *beneficial owner* means the person who is the owner of the income for tax purposes and who beneficially owns that income. A person shall be treated as the owner of the income to the extent that it is required under U.S. tax principles to include the amount paid in gross income under section 61 (determined without regard to an exclusion or exemption from gross income under the Internal Revenue Code). Beneficial ownership of income is determined under the provisions of section 7701(l) and the regulations under that section and any other applicable general U.S. tax principles, including principles governing the determination of whether a transaction is a conduit transaction. Thus, a person receiving income in a capacity as a nominee, agent, or custodian for another person is not the beneficial owner of the income. In the case of a scholarship, the student receiving the scholarship is the beneficial owner of that scholarship. In the case of a payment of an amount that is not income, the beneficial owner determination shall be made under this paragraph (c)(6) as if the amount were income.
- (ii) *Special rules-*
- (A) *General rule.* The beneficial owners of income paid to an entity described in this paragraph (c)(6)(ii) are those persons described in paragraphs (c)(6)(ii)(B) through (D) of this section.
- (B) *Foreign partnerships.* The beneficial owners of income paid to a foreign partnership (whether a nonwithholding or a withholding foreign partnership) are the partners in the partnership, unless they themselves are not the beneficial owners of the income under this paragraph (c)(6). For example, a partnership (first tier) that is a partner in another partnership (second tier) is not the beneficial owner of income paid to the second tier partnership since the first tier partnership is not the owner of the income under U.S. tax principles.

Rather, the partners of the first tier partnership are the beneficial owners (to the extent they are not themselves persons that are not beneficial owners under this paragraph (c)(6)). See §1.1441-5(b) for applicable withholding procedures for payments to a domestic partnership. See also §1.1441-5(c)(3)(ii) for applicable withholding procedures for payments to a foreign partnership where one of the partners (at any level in the chain of tiers) is a domestic partnership.

- (C) *Foreign simple trusts and foreign grantor trusts.* The beneficial owners of income paid to a foreign simple trust, as described in paragraph (c)(23) of this section, are the beneficiaries of the trust, unless they themselves are not the beneficial owners of the income under this paragraph (c)(6). The beneficial owners of income paid to a foreign grantor trust, as described in paragraph (c)(26) of this section, are the persons treated as the owners of the trust, unless they themselves are not the beneficial owners of the income under this paragraph (c)(6).
 - (D) *Other foreign trusts and foreign estates.* The beneficial owner of income paid to a foreign complex trust as defined in paragraph (c)(25) of this section or to a foreign estate is the foreign complex trust or estate itself.
- (7) *Withholding agent.* For a definition of the term *withholding agent* and applicable rules, see §1.1441-7.
 - (8) *Person.* For purposes of the regulations under chapter 3 of the Code, the term *person* shall mean a person described in section 7701(a)(1) and the regulations under that section and a U.S. branch to the extent treated as a U.S. person under paragraph (b)(2)(iv) of this section. For purposes of the regulations under chapter 3 of the Code, the term *person* does not include a wholly-owned entity that is disregarded for federal tax purposes under §301.7701-2(c)(2) of this chapter as an entity separate from its owner. See paragraph (b)(2)(iii) of this section for procedures applicable to payments to such entities.
 - (9) *Source of income.* The source of income is determined under the provisions of part I (section 861 and following) , subchapter N, chapter 1 of the Code and the regulations under those provisions.
 - (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.

- (11) *Reduced rate.* For purposes of regulations under chapter 3 of the Code, and other withholding provisions of the Code, the term *reduced rate*, when used in regulations under chapter 3 of the Code, shall include an exemption from tax.
- (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.
- (13) *Intermediary.* An *intermediary* means, with respect to a payment that it receives, a person that, for that payment, acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether such other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.
- (14) *Nonqualified intermediary.* A *nonqualified intermediary* means any intermediary that is not a U.S. person and not a qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, or a qualified intermediary that is not acting in its capacity as a qualified intermediary with respect to a payment. For example, to the extent an entity that is a qualified intermediary provides another withholding agent with a foreign beneficial owner withholding certificate as defined in paragraph (e)(2)(i) of this section, the entity is not acting in its capacity as a qualified intermediary. Notwithstanding the preceding sentence, a qualified intermediary is acting as a qualified intermediary to the extent it provides another withholding agent with Forms W-9, or other information regarding U.S. non-exempt recipients pursuant to its qualified intermediary agreement with the IRS.
- (15) *Qualified intermediary.* The term *qualified intermediary* is defined in paragraph (e)(5)(ii) of this section.
- (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.
- (18) *Documentation.* The term *documentation* refers to both withholding certificates, as defined in paragraph (c)(16) of this section, and documentary evidence or other appropriate documentation, as defined in paragraph (c)(17) of this section.
- (19) *Payor.* The term *payor* is defined in §31.3406(a)-2 of this chapter and §1.6049-4(a)(2) and generally includes a withholding agent, as defined in §1.1441-7(a). The term also includes any person that makes a payment to an intermediary, flow-through entity, or U.S. branch that is not treated as a U.S. person to the extent the intermediary, flow-through, or U.S. branch provides a Form W-9 or other appropriate information relating to a payee so that the payment can be reported under chapter 61 of the Internal Revenue Code and, if required, subject to backup withholding under section 3406. This latter rule does not preclude the intermediary, flow-through entity, or U.S. branch from also being a payor.
- (20) *Exempt recipient.* The term *exempt recipient* means a person that is exempt from reporting under chapter 61 of the Internal Revenue Code and backup withholding under section 3406 and that is described in §§1.6041-3(q), 1.6045-2(b)(2)(i), and 1.6049-4 (c)(1)(ii), and §5f.6045-1(c)(3)(i)(B) of this chapter. Exempt recipients are not exempt from withholding under chapter 3 of the Internal Revenue Code unless they are U.S. persons or foreign persons entitled to an exemption from withholding under chapter 3.
- (21) *Non-exempt recipient.* A *non-exempt recipient* is any person that is not an exempt recipient under paragraph (c)(20) of this section.
- (22) *Reportable amounts.* *Reportable amounts* are defined in paragraph (e)(3)(vi) of

this section.

- (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.
- (24) *Foreign simple trust.* A *foreign simple trust* is a foreign trust that is described in section 651(a).
- (25) *Foreign complex trust.* A foreign complex trust is a foreign trust other than a foreign simple trust or foreign grantor trust.
- (26) *Foreign grantor trust.* A *foreign grantor trust* is a foreign trust but only to the extent all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679.
- (27) *Partnership.* The term *partnership* means any entity treated as a partnership under §301.7701-2 or -3 of this chapter.
- (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) Beneficial owner's or payee's claim of U.S. status-

- (1) *In general*. Under paragraph (b)(1) of this section, a withholding agent is not required to withhold under chapter 3 of the Code on payments to a U.S. payee, to a person presumed to be a U.S. payee in accordance with the provisions of paragraph (b)(3) of this section, or to a person that the withholding agent may treat as a U.S. beneficial owner of the payment. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on the provisions of this paragraph (d) in order to determine whether to treat a payee or beneficial owner as a U.S. person.
- (2) *Payments for which a Form W-9 is otherwise required*. A withholding agent may treat as a U.S. payee any person who is required to furnish a Form W-9 and who furnishes it in accordance with the procedures described in §§31.3406(d)-1 through 31.3406(d)-5 of this chapter (including the requirement that the payee furnish its taxpayer identifying number (TIN)) if the withholding agent meets all the requirements described in §31.3406(h)-3(e) of this chapter regarding reliance by a payor on a Form W-9. Providing a Form W-9 or valid substitute form shall serve as a statement that the person whose name is on the form is a U.S. person. Therefore, a foreign person, including a U.S. branch treated as a U.S. person under paragraph (b)(2)(iv) of this section, shall not provide a Form W-9. A U.S. branch of a foreign person may establish its status as a foreign person exempt from reporting under chapter 61 and backup withholding under section 3406 by providing a withholding certificate on Form W-8.

- (3) *Payments for which a Form W-9 is not otherwise required*. In the case of a payee who is not required to furnish a Form W-9 under section 3406 (e.g., a person

exempt from reporting under chapter 61 of the Internal Revenue Code), the withholding agent may treat the payee as a U.S. payee if the payee provides the withholding agent with a Form W-9 or a substitute form described in §31.3406(h)-3(c)(2) of this chapter (relating to forms for exempt recipients) that contains the payee's name, address, and TIN. The form must be signed under penalties of perjury by the payee if so required by the form or by §31.3406(h)-3 of this chapter. Providing a Form W-9 or valid substitute form shall serve as a statement that the person whose name is on the certificate is a U.S. person. A Form W-9 or valid substitute form shall not be provided by a foreign person, including any U.S. branch of a foreign person whether or not the branch is treated as a U.S. person under paragraph (b)(2)(iv) of this section. See paragraph (e)(3)(v) of this section for withholding certificates provided by U.S. branches described in paragraph (b)(2)(iv) of this section. The procedures described in §31.3406(h)-2(a) of this chapter shall apply to payments to joint payees. A withholding agent that receives a Form W-9 to satisfy this paragraph (d)(3) must retain the form in accordance with the provisions of §31.3406(h)-3(g) of this chapter, if applicable, or of paragraph (e)(4)(iii) of this section (relating to the retention of withholding certificates) if §31.3406(h)-3(g) of this chapter does not apply. The rules of this paragraph (d)(3) are only intended to provide a method by which a withholding agent may determine that a payee is a U.S. person and do not otherwise impose a requirement that documentation be furnished by a person who is otherwise treated as an exempt recipient for purposes of the applicable information reporting provisions under chapter 61 of the Internal Revenue Code (e.g., §1.6049-4(c)(1)(ii) for payments of interest).

- (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) *Beneficial owner's claim of foreign status-*

(1) *Withholding agent's reliance-*

(i) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may treat a payment as made to a foreign beneficial owner in accordance with the provisions of paragraph (e)(1)(ii) of this section. See paragraph (e)(4)(viii) of this section for applicable reliance rules. See paragraph (b)(4) of this section for a description of payments for which a claim of foreign status is relevant for purposes of claiming a reduced rate of withholding for purposes of section 1441, 1442, or 1443. See paragraph (b)(5) of this section for a list of payments for which a claim of foreign status is relevant for other purposes, such as claiming an exemption from information reporting under chapter 61 of the Code.

(ii) *Payments that a withholding agent may treat as made to a foreign person that is a beneficial owner-*

(A) *General rule.* The withholding agent may treat a payment as made to a foreign person that is a beneficial owner if it complies with the requirements described in paragraph (e)(1)(ii)(B) of this section and, then, only to the extent-

(1) That the withholding agent can reliably associate the payment with a beneficial owner withholding certificate described in paragraph (e)(2) of this section furnished by the person whose name is on the certificate or attached to a valid foreign intermediary, flow-through, or U.S. branch withholding certificate;

(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;
 - (4) That the withholding agent can reliably associate the payment with a withholding certificate described in §1.1441-5(c)(3)(iii) or (e)(5)(iii) from a flow-through entity claiming the income is effectively connected income;
 - (5) That the withholding agent identifies the payee as a U.S. branch described in paragraph (b)(2)(iv) of this section, the payment to which it treats as effectively connected income in accordance with §1.1441-4(a) (2)(ii) or (3);
 - (6) That the withholding agent identifies the payee as an international organization (or any wholly-owned agency or instrumentality thereof) as defined in section 7701(a)(18) that has been designated as such by executive order (pursuant to 22 U.S.C. 288 through 288(f)); or
 - (7) That the withholding agent pays interest from bankers' acceptances and identifies the payee as a foreign central bank of issue (as defined in §1.861-2(b)(4)).
- (B) *Additional requirements.* In order for a payment described in paragraph (e)(1)(ii)(A) of this section to be treated as made to a foreign beneficial owner, the withholding agent must hold the documentation (if required) prior to the payment, comply with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section (if required), and must not have been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. If the withholding agent has been so notified, it may rely on the withholding certificate or other documentation only to the extent provided under procedures prescribed by the IRS (see §601.601(d)(2) of this chapter). See paragraph (b)(2)(vii) of this section for rules regarding reliable association of a payment with a withholding certificate or other appropriate documentation.

(2) *Beneficial owner withholding certificate-*

(i) *In general.* A beneficial owner withholding certificate is a statement by which the beneficial owner of the payment represents that it is a foreign person and, if applicable, claims a reduced rate of withholding under section 1441. A separate withholding certificate must be submitted to each withholding agent. If the beneficial owner receives more than one type of payment from a single withholding agent, the beneficial owner may have to submit more than one withholding certificate to the single withholding agent for the different types of payments as may be required by the applicable forms and instructions, or as the withholding agent may require (such as to facilitate the withholding agent's compliance with its obligations to determine withholding under this section or the reporting of the amounts under §1.1461-1 (b) and (c)). For example, if a beneficial owner claims that some but not all of the income it receives is effectively connected with the conduct of a trade or business in the United States, it may be required to submit two separate withholding certificates, one for income that is not effectively connected and one for income that is so connected. See §1.1441-6(b)(2) for special rules for determining who must furnish a beneficial owner withholding certificate when a benefit is claimed under an income tax treaty. See paragraph (e)(4)(ix) of this section for reliance rules in the case of certificates held by another person or at a different branch location of the same person. For purposes of a qualified intermediary acting as a qualified derivatives dealer, a qualified intermediary withholding certificate, as described in paragraph (e)(3)(ii) of this section is a beneficial owner withholding certificate for purposes of treaty claims for dividends.

(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) *Intermediary, flow-through, or U.S. branch withholding certificate-*

- (i) *In general.* An intermediary withholding certificate is a Form W-8 by which a payee represents that it is a foreign person and that it is an intermediary (whether a qualified or nonqualified intermediary) with respect to a payment and not the beneficial owner. See paragraphs (e)(3)(ii) and (iii) of this section. A flow-through withholding certificate is a Form W-8 used by a flow-through entity as defined in paragraph (c)(23) of this section. See §1.1441-5(c)(3)(iii) (a nonwithholding foreign partnership), §1.1441-5(e)(5)(iii) (a foreign simple trust or foreign grantor trust) or §1.1441-6(b)(2) (foreign entity presenting claims on behalf of its interest holders for a reduced rate of withholding under an income tax treaty). A U.S. branch certificate is a Form W-8 furnished under paragraph (e)(3)(v) of this section by a U.S. branch described in paragraph (b)(2)(iv) of this section. See paragraph (e)(4)(viii) of this section for applicable reliance rules.
- (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);

- (B) A certification that, with respect to accounts it identifies on its withholding statement (as described in paragraph (e)(5)(v) of this section), the qualified intermediary is not acting for its own account but is acting as a qualified intermediary;
- (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

- (E) In the case of any payment with respect to a potential section 871(m) transaction (including any dividend equivalent payment within the meaning of §1.871-15(i)) or underlying security (as defined in §1.871-15(a)(15)) received by a qualified intermediary acting as a qualified derivatives dealer, a certification that the home office or branch receiving the payment, as applicable, meets the requirements to act as a qualified derivatives dealer as further described in paragraph (e)(6) of this section and that the qualified derivatives dealer assumes primary withholding and reporting responsibilities under chapters 3, 4, and 61, and section 3406 with respect to any payments it makes with respect to potential section 871(m) transactions;
- (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;
- (B) A certification that the nonqualified intermediary is not acting for its own account;
- (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; and
- (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)(i) 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)(i) 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).

(7) *Liability for tax, interest, and penalties.* If a nonqualified intermediary fails to provide allocation information by February 14 following the year of payment for all or a portion of the payments made to any withholding rate pool, the withholding agent from whom the nonqualified intermediary received payments of reportable amounts shall not be liable for any tax, interest, or penalties, due solely to the errors or omissions of the nonqualified intermediary. See §1.1441-7(b)(2) through (10) for the due diligence requirements of a withholding agent. Because failure by the nonqualified intermediary to provide allocation information results in a payment not being reliably associated with valid documentation, the beneficial owners for whom the nonqualified intermediary acts are not entitled to a reduced rate of withholding. Therefore, the nonqualified intermediary, as a withholding agent, shall be liable for any tax not withheld by the withholding agent in accordance with the presumption rules, interest on the under withheld tax if the nonqualified intermediary fails to pay the tax timely, and any applicable penalties, including the penalties under sections 6656 (failure to deposit), 6721 (failure to file information returns) and 6722 (failure to file payee statements). Failure to provide allocation information for more than 10 percent of the payments made to a particular withholding rate pool will be presumed to be an intentional failure within the meaning of sections 6721(e) and 6722(c). The nonqualified intermediary may rebut the presumption.

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

See paragraph (e)(3)(v) of this section and §1.1441-5(c)(3)(iv) and (e)(5)(iv) for the applicability of this paragraph (e)(3)(iv) to U.S. branches described in paragraph (b)(2)(iv) of this section (other than U.S. branches treated as U.S. persons) and flow-through entities.

- (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), and 1.1471-3(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).
- (vi) *Reportable amounts.* For purposes of chapter 3 of the Internal Revenue Code, a nonqualified intermediary, qualified intermediary, flow-through entity, and U.S. branch described in paragraph (b)(2)(iv) of this section

(other than a U.S. branch that agrees to be treated as a U.S. person) must provide a withholding certificate and associated documentation and other information with respect to reportable amounts. For purposes of the regulations under chapter 3 of the Internal Revenue Code, the term reportable amount means an amount subject to withholding within the meaning of §1.1441-2(a), bank deposit interest (including original issue discount) and similar types of deposit interest described in section 871(i)(2)(A) or 881(d) that are from sources within the United States, and any amount of interest or original issue discount from sources within the United States on the redemption of certain short-term obligations described in section 871(g)(1)(B) or 881(e). Reportable amounts shall not include amounts received on the sale or exchange (other than a redemption) of an obligation described in section 871(g)(1)(B) or 881(e) that is effected at an office outside the United States. See §1.6045-1(g)(3) to determine whether a sale is effected at an office outside the United States. Reportable amounts also do not include payments with respect to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in §1.6049-5(b)(7), (10) or (11) (relating to certain obligations issued in bearer form). While short-term OID and bank deposit interest are not subject to withholding under chapter 3 of the Internal Revenue Code, such amounts may be subject to information reporting under section 6049 if paid to a U.S. person who is not an exempt recipient described in §1.6049-4(c)(1)(ii) and to backup withholding under section 3406 in the absence of documentation. See §1.6049-5(d)(3)(iii) for applicable procedures when such amounts are paid to a foreign intermediary.

- (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.
- (7) A certificate furnished by a person representing to be an integral part of a foreign government (within the meaning of §1.892-2T(a)(2)) in accordance with §1.1441-8(b), or by a

person representing to be a foreign central bank of issue (within the meaning of §1.861-2(b)(4)) or the Bank for International Settlements in accordance with §1.1441-8(c)(1).

- (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.
 - (B) *Requirements-*
 - (1) *In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of user access that result in the submission renewal, or modification of a Form W-8. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and furnishing Form W-8 is the person named in the Form.
 - (2) *Same information as paper Form W-8.* The electronic transmission must provide the withholding agent or payor with exactly the same information as the paper Form W-8.

- (3) *Perjury statement and signature requirements.* The electronic transmission must contain an electronic signature by the person whose name is on the Form W-8 and the signature must be under penalties of perjury in the manner described in this paragraph (e)(4)(iv)(B)(3).
- (i) *Perjury statement.* The perjury statement must contain the language that appears on the paper Form W-8. The electronic system must inform the person whose name is on the Form W-8 that the person must make the declaration contained in the perjury statement and that the declaration is made by signing the Form W-8. The instructions and the language of the perjury statement must immediately follow the person's certifying statements and immediately precede the person's electronic signature.
- (ii) *Electronic signature.* The act of the electronic signature must be effected by the person whose name is on the electronic Form W-8. The signature must also authenticate and verify the submission. For this purpose, the terms *authenticate* and *verify* have the same meanings as they do when applied to a written signature on a paper Form W-8. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the person's Form W-8 submission.
- (4) *Requests for electronic Form W-8 data.* Upon request by the Internal Revenue Service during an examination, the withholding agent must supply a hard copy of the electronic Form W-8 and a statement that, to the best of the withholding agent's knowledge, the electronic Form W-8 was filed by the person whose name is on the form. The hard copy of the electronic Form W-8 must provide exactly the same information as, but need not be identical to, the paper Form W-8.

(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));
 - (B) A withholding certificate on which a beneficial owner is claiming exemption from withholding because income is effectively connected with a U.S. trade or business;
 - (C) A withholding certificate on which a beneficial owner is claiming exemption from withholding under section 871(f) for certain annuities received under qualified plans;
 - (D) A withholding certificate on which a beneficial owner is claiming an exemption based solely on a foreign organization's claim of tax exempt status under section 501(c) or private foundation status (however, a TIN is not required from a foreign private foundation that is subject to the 4-percent tax under section 4948(a) on income if that income would be exempt from withholding but for section 4948(a)

(e.g., portfolio interest));

- (E) A withholding certificate from a person representing to be a qualified intermediary described in paragraph (e)(5)(ii) of this section;
- (F) A withholding certificate from a person representing to be a withholding foreign partnership or a withholding foreign trust;
- (G) A withholding certificate provided by a foreign organization that is described in section 501(c);
- (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.

- (A) *Classification.* A withholding agent may rely on the claim of entity classification indicated on the withholding certificate that it receives from or for the beneficial owner, unless it has actual knowledge or reason to know that the classification claimed is incorrect. A withholding agent may not rely on a person's claim of classification other than as a corporation if the name of the corporation indicates that the person is a per se corporation described in §301.7701-2(b)(8)(i) of this chapter unless the certificate contains a statement that the person is a grandfathered per se corporation described in §301.7701-2(b)(8) of this chapter and that its grandfathered status has not been terminated. In the absence of reliable representation or information regarding the classification of the payee or beneficial

owner, see §1.1441-1(b)(3)(ii) for applicable presumptions.

- (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)(9)(v) for a similar reliance rule that applies for purposes of chapter 4.

(5) *Qualified intermediaries-*

- (i) *In general.* A qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, may furnish a qualified intermediary withholding certificate to a withholding agent. The withholding certificate provides certifications on behalf of other persons for the purpose of claiming and verifying reduced rates of withholding under section 1441 or 1442 and for the purpose of reporting and withholding under other provisions of the Code, such as the provisions under chapter 61 and section 3406 (and the regulations under those provisions), or for the qualified derivative dealer (if applicable). Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for the persons for whom the qualified intermediary receives the payment, including interest holders in a qualified intermediary that is fiscally transparent under the regulations under section 894. Although the qualified intermediary is required to obtain withholding certificates or other appropriate documentation from beneficial owners, payees, or interest holders pursuant to its agreement with the IRS, it is generally not required to attach such documentation to the intermediary withholding certificate. Notwithstanding the preceding sentence, a qualified intermediary must provide a withholding agent with the Forms W-9, or disclose the names, addresses, and taxpayer identifying numbers, if known, of those U.S. non-exempt recipients for whom the qualified intermediary receives reportable amounts (within the meaning of paragraph (e)(3)(vi) of this section) to the extent required in the qualified intermediary's agreement with the IRS. When a qualified intermediary is acting as a qualified derivatives dealer, the withholding certificate entitles a withholding agent to make payments with respect to potential section 871(m) transactions that are not underlying securities and dividend equivalent payments on underlying securities to the qualified derivatives dealer free of withholding. A withholding agent is required to withhold on all other U.S. source FDAP payments made to a qualified derivatives dealer as required by applicable law. Paragraph (e)(6) of this section contains detailed rules prescribing the circumstances in which a

qualified intermediary can act as a qualified derivatives dealer. A person may claim qualified intermediary status before an agreement is executed with the IRS if it has applied for such status and the IRS authorizes such status on an interim basis under such procedures as the IRS may prescribe.

(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) A foreign person that is a home office or has a branch that is an eligible entity as described in paragraph (e)(6)(ii) of this section, without regard to the requirement that the person be a qualified intermediary; or
- (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) If a qualified intermediary is acting as a qualified derivatives dealer, designate the accounts:
 - (i) For which the qualified derivatives dealer is receiving payments with respect to potential section 871(m) transactions or underlying securities as a qualified derivatives dealer;
 - (ii) For which the qualified derivatives dealer is receiving payments with respect to potential section 871(m) transactions (and that are not underlying securities) for which withholding is not required;
 - (iii) For which qualified derivatives dealer is receiving) payments with respect to underlying securities for which withholding is required; and
 - (iv If applicable, identifying the home office or branch that is) treated as the owner for U.S. federal income tax purposes; and
 - (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) of this section 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 in 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).

(6) *Qualified derivatives dealers-*

- (i) *In general.* To act as a qualified derivatives dealer under a qualified intermediary withholding agreement, the home office or branch that is a qualified intermediary must be an eligible entity as described in paragraph (e)(6)(ii) of this section and, in accordance with the qualified intermediary agreement, must-
 - (A) Furnish to a withholding agent a qualified intermediary withholding certificate (described in paragraph (e)(3)(ii) of this section) that indicates that the home office or branch receiving the payment is a qualified derivatives dealer with respect to the payments associated with the withholding certificate;
 - (B) Agree to assume the primary withholding and reporting responsibilities, including the documentation provisions under chapters 3, 4, and 61, and section 3406, the regulations under those provisions, and other provisions of the Internal Revenue Code, for payments made as a qualified derivatives dealer with respect to potential section 871(m) transactions. For this purpose, a qualified derivatives dealer is required to obtain a withholding certificate or other appropriate documentation from each counterparty to whom the qualified derivatives dealer makes a reportable payment (including a dividend equivalent payment within the meaning of §1.871-15(i)). The qualified derivatives dealer is also required to determine whether any payment it makes with respect to a potential section 871(m) transaction is, in whole or in part, a dividend equivalent;
 - (C) Agree to remain liable for tax under section 881, if any, on any payment with respect to a potential section 871(m) transaction (including a dividend equivalent payment within the meaning of

§1.871-15(i)) and underlying securities (including dividends) it receives as a qualified derivatives dealer, or in the case of dividend equivalents received in its equity derivatives dealer capacity, the taxes required pursuant to §1.871-15(q);

- (D) Comply with the compliance review procedures applicable to a qualified intermediary that acts as a qualified derivatives dealer under the qualified intermediary withholding agreement, which will specify the time and manner in which a qualified derivatives dealer must:
 - (1) Certify to the IRS that it has complied with the obligations to act as a qualified derivatives dealer (including its performance of a periodic review applicable to a qualified derivatives dealer);
 - (2) Report to the IRS any amounts subject to reporting on Forms 1042-S (including dividend equivalent payments that it made);
 - (3) Report to the IRS on the appropriate U.S. federal tax return, its tax liabilities, including its tax liability pursuant to §1.871-15(q)(1) and any other taxes on payments with respect to potential section 871(m) transactions or underlying securities as defined in §1.871-15(a)(15) it receives; and
 - (4) Respond to inquiries from the IRS about obligations it has assumed as a qualified derivatives dealer in a timely manner;

- (E) Agree to act as a qualified derivatives dealer for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities as defined in §1.871-15(a)(15) (including dividend equivalent payments within the meaning of §1.871-15(i)), excluding any payments made or received by the qualified derivatives dealer to the extent the payment is treated as effectively connected with the conduct of a trade or business within the United States within the meaning of section 864, and not act as a qualified derivatives dealer for any other payments. For purposes of this paragraph (E), any securities lending or sale-repurchase transaction that the qualified intermediary enters into that is a section 871(m) transaction is treated as entered into as a principal unless the qualified intermediary determines that it is acting as an intermediary with respect to that transaction; and

- (F) Each home office or branch must qualify and be approved for

qualified derivatives dealer status and must represent itself as a qualified derivatives dealer on its Form W-8IMY and separately identify the home office or branch as the recipient on a withholding statement (if necessary). The home office means a foreign person, excluding any branches of the foreign person, that applies for qualified derivatives dealer status. Each home office or branch that obtains qualified derivatives dealer status must be treated as a separate qualified derivatives dealer.

- (ii) *Definition of eligible entity.* An eligible entity is a home office or branch that is a qualified intermediary and that, treating the home office or branch as a separate entity, is-
- (A) An equity derivatives dealer subject to regulatory supervision as a dealer by a governmental authority in the jurisdiction in which it was organized or operates;
 - (B) A bank or bank holding company subject to regulatory supervision as a bank or bank holding company (as applicable) by a governmental authority in the jurisdiction in which it was organized or operates or an entity that is wholly-owned (directly or indirectly) by a bank or bank holding company subject to regulatory supervision as a bank or bank holding company (as applicable) by a governmental authority in the jurisdiction in which the bank or bank holding company (as applicable) was organized or operates and that in its equity derivatives dealer capacity-
 - (1) Issues potential section 871(m) transactions to customers; and
 - (2) Receives dividends with respect to stock or dividend equivalent payments with respect to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued;
 - (C) A foreign branch of a U.S. financial institution, if the foreign branch would meet the requirements of paragraph (A) or (B) of this section if it were a separate entity; or
 - (D) Any person otherwise acceptable to the IRS.

(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), (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).
- (5) *Effective/applicability date.* Paragraphs (e)(5)(ii)(C) and (e)(5)(v)(B)(4) of this section apply to payments made on or after on January 19, 2017.

Cite as 26 C.F.R. § 1.1441-1

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Editor's Note:

For FEDERAL REGISTER citations affecting §1.1441-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.