

Part III

Administrative, Procedural, and Miscellaneous

Withholding and Information Reporting on Payments to Financial Institutions in U.S. Possessions

Notice 2001-11

Corporations and partnerships that are organized under the laws of a possession of the United States are generally treated as foreign persons for purposes of section 1441 and the regulations thereunder (relating to the withholding of tax on payments to foreign persons). See section 881(b)(1) for exceptions to this general rule. Financial institutions organized under the laws of a U.S. possession (“possessions financial institutions”) have noted that, to the extent they act as intermediaries (that is, as agents for others), the regulations under section 1441, as in effect on January 1, 2001 (the “new withholding regulations”), will require them to function as nonqualified intermediaries. Payments of U.S. source income made to nonqualified intermediaries are generally subject to 30-percent withholding (or 31-percent withholding in the case of deposit interest and certain payments on short-term obligations) unless the nonqualified intermediary provides documentation from, and other information relating to, customers on whose behalf the nonqualified intermediary acts that supports a reduced rate of withholding. See section 1.1441-1(b)(1) and 1.1441-1(e)(3)(iii) and (iv). Possessions financial institutions have commented that the requirement to provide a withholding agent with information relating to the

possessions financial institution's customers should not apply to them because they are subject to all of the withholding and information reporting requirements that apply to U.S. withholding agents under Chapters 3 and 61 and section 3406 of the Internal Revenue Code and because they are subject to direct audit supervision by the Internal Revenue Service.

Treasury and IRS agree that, for the reasons described above, possessions financial institutions should not be required to act as nonqualified intermediaries under the new withholding regulations. Accordingly, until further notice, any possessions financial institution will be treated as a U.S. branch under section 1.1441-1(b)(2)(iv) of the new withholding regulations. As such, it may agree with a withholding agent from which it is receiving payments to be treated as a U.S. person. See section 1.1441-1(b)(2)(iv)(A) and (E). Under the general rule of section 1.1441-1(b)(1), payments of U.S. source income to a possessions financial institution that agrees to be treated as a U.S. person will be treated as made to a U.S. payee and therefore not subject to withholding under section 1441. The possessions financial institution shall be subject to all of the withholding and reporting obligations of a U.S. withholding agent under chapters 3 and 61 of the Code and section 3406. For purposes of this notice, the term financial institution has the same meaning as in section 1.1441-1(c)(5).

A possessions financial institution that agrees to be treated as a U.S. person must provide a withholding agent with a properly completed Form W-8IMY on which it evidences its agreement to be treated as a U.S. person. The possessions financial institution should not provide a Form W-9. See section 1.1441-1(b)(2)(iv). In addition, a withholding agent making a payment to a possessions financial institution that agrees to be treated as a U.S. person must report payments made to the institution on Form 1042-S. See section 1.1441-1(b)(2)(iv) and 1.1461-1(c)(4)(i)(C)(1).

Contact Information

The principal author of this Notice is Carl Cooper of the Office of the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. For further information regarding this Notice contact Mr. Cooper at 202-622-3840 (not a toll-free call).