

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

#### **T.D. 9650, page 394.**

These temporary and final regulations provide guidance on determining the ownership of a passive foreign investment company, the annual filing requirements for shareholders of PFICs, and an exclusion from certain filing requirements for shareholders that constructively own interests in certain foreign corporations.

#### **REG-140974-11, page 438.**

This is a notice of proposed rulemaking by cross-reference to temporary regulations. The cross-referenced temporary regulations provide guidance on determining the ownership of a passive foreign investment company, the annual filing requirements for shareholders of PFICs, and an exclusion from certain filing requirements for shareholders that constructively own interests in certain foreign corporations. Comments requested by March 31, 2014.

#### **REG-113350-13, page 440.**

This document withdraws a portion of proposed regulations issued under section 1291 on April 1, 1992. The withdrawn portion relates to the definitions of the terms pedigreed QEF, section 1291 fund, shareholder, indirect shareholder, and to annual information reporting requirements applicable to certain shareholders of passive foreign investment companies. A portion of REG-209054-87 withdrawn.

#### **Rev. Proc. 2014-12, page 415.**

This revenue procedure establishes the requirements under which the Internal Revenue Service will not challenge partnership allocations of section 47 credits by a partnership to its partners.

#### **Rev. Proc. 2014-13, page 419.**

This revenue procedure provides guidance to foreign financial institutions (FFIs) entering into an FFI agreement with the Internal Revenue Service under section 1471(b) of the Internal Revenue Code and § 1.1471-4 of the Treasury Regulations (the FFI agreement) to be treated as participating FFIs. The revenue procedure also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) (reporting Model 2 FFIs) on complying with the terms of an FFI agreement, as modified by the IGA.

### EXEMPT ORGANIZATIONS

#### **Notice 2014-2, page 407.**

This notice confirms that tax-exempt hospitals can rely on proposed regulations under § 501(r) contained in notices of proposed rulemaking (NPRMs) issued on June 26, 2012, and April 5, 2013, pending the publication of final or temporary regulations or other applicable guidance.

#### **Notice 2014-3, page 408.**

This notice contains a proposed revenue procedure that provides correction and disclosure procedures under which certain failures to meet the requirements of § 501(r) of the Code will be excused for purposes of § 501(r)(1) and 501(r)(2)(B). Comments requested by March 14, 2014.

#### **Rev. Proc. 2014-11, page 411.**

This revenue procedure provides procedures for reinstating the tax-exempt status of organizations that have had their tax-exempt status automatically revoked under section 6033(j) of the Internal Revenue Code for failure to file required annual returns or notices for three consecutive years. Notice 2011-44, modified and superseded.

Finding Lists begin on page ii.  
Index for July through January begins on page iv.



# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 1291.—Interest on Tax Deferral

TD 9650

### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service 26 CFR Part 1

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies; Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance on determining ownership of a passive foreign investment company (“PFIC”) and on the annual filing requirements for shareholders of PFICs. These temporary regulations primarily affect shareholders of PFICs that do not currently file Form 8621, “Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund,” with respect to their PFIC interests. In addition, these temporary regulations provide guidance on an exception to the requirement for certain shareholders of foreign corporations to file Form 5471, “Information Return of U.S. Persons with Respect to Certain Foreign Corporations.” These regulations also update certain rules related to Form 5471 to take into account statutory changes. The text of these temporary regulations also serves as the text of the proposed regulations (REG-140974-11) set forth in the notice of proposed rule-making on this subject in this issue of the **Bulletin**.

DATES: *Effective Date:* These regulations are effective on December 31, 2013.

*Applicability Date:* For dates of applicability, see §§1.1291-1T(k), 1.1291-

9T(k)(3), 1.1298-1T(h), 1.6038-2T(m), and 1.6046-1T(l)(3).

FOR FURTHER INFORMATION CONTACT: Barbara E. Rasch or Susan E. Massey at (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

##### A. Sections 1291 and 1298

Sections 1291 through 1298 of the Internal Revenue Code (“Code”) set forth three tax regimes for shareholders that own stock of a PFIC: (i) the excess distribution rules under section 1291 (“section 1291 regime”); (ii) the qualified electing fund (“QEF”) rules under section 1293; and (iii) the mark to market (“MTM”) rules under section 1296. In general, section 1291 imposes a special tax and interest charge on a United States person that is a shareholder of a PFIC and that receives an excess distribution (within the meaning of section 1291(b)) from a PFIC or recognizes gain derived from a disposition of stock in a PFIC that is treated as an excess distribution (within the meaning of section 1291(a)(2)). A shareholder that is subject to the QEF rules includes amounts in gross income under section 1293, and a shareholder that is subject to the MTM rules includes amounts in gross income under section 1296. Section 1298 sets forth special rules applicable to shareholders of PFICs, including attribution rules that treat a United States person as the owner of PFIC stock that is owned by another person (other than an individual). For instance, section 1298(a)(2) sets forth the attribution rules for ownership through a corporation, and section 1298(a)(3) sets forth the attribution rules for ownership through a partnership, estate, or trust. In addition, section 1298(a)(1)(B) provides that, pursuant to regulations, stock owned (or treated as owned) by a United States person may be treated as owned by another United States person.

On April 1, 1992, the **Federal Register** published proposed regulations (57 FR 11024) under sections 1291, 1293, 1295,

and 1297 of the Code concerning, among other things, the taxation of shareholders of certain PFICs upon payment of distributions by such companies or upon disposition of the stock of such companies (“1992 proposed regulations”). The IRS and the Department of the Treasury (“Treasury Department”) received written comments on the 1992 proposed regulations and held a hearing on November 23, 1992.

Subsequently, the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788) (“Taxpayer Relief Act”) modified certain aspects of the PFIC rules. Section 1122(a) of the Taxpayer Relief Act added the MTM regime under section 1296 to the Code, and section 1121 of the Taxpayer Relief Act added section 1297(d). Section 1297(d) provides that, in certain situations, a PFIC that is also a controlled foreign corporation (“CFC”) is not treated as a PFIC with respect to certain shareholders. However, section 1298(a)(2)(B) provides that a foreign corporation that would, but for the rules of section 1297(d), be a PFIC is treated as a PFIC with respect to its shareholders for purposes of determining whether the shareholders own an interest in any PFIC held by the foreign corporation.

Section 521 of the Hiring Incentives to Restore Employment Act of 2010 (Public Law 111-147, 124 Stat. 71) (“HIRE Act”) added new paragraph (f) to section 1298, effective March 18, 2010. Section 1298(f) requires a United States person that is a shareholder of a PFIC to file an annual report containing such information as the Secretary may require. The HIRE Act also amended section 6501(c)(8) (which was further amended by Public Law 111-226, 124 Stat. 2389) to extend the statute of limitations for assessment of tax for a shareholder that fails to comply with the reporting requirements of section 1298(f).

In Notice 2010-34 (2010-1 CB 612 (April 26, 2010)) (see 26 CFR § 601.601(d)(2)(ii)(b)), the IRS and the Treasury Department announced that they were developing further guidance regarding the reporting obligations under section 1298(f) and that PFIC share-

holders that were not otherwise required to file Form 8621 prior to March 18, 2010, would not be required to file an annual report under section 1298(f) for taxable years beginning before March 18, 2010.

In Notice 2011-55 (2011-29 CB 663 (July 18, 2011)) (see 26 CFR § 601.601(d)(2)(ii)(b)), the IRS and the Treasury Department announced their intention to issue regulations under section 1298(f) and to release a revised Form 8621, modified to reflect the reporting requirements under section 1298(f). In addition, Notice 2011-55 suspended the section 1298(f) reporting requirements until the release of the revised Form 8621 for PFIC shareholders that were not otherwise required to file Form 8621 under the then-current Instructions to Form 8621. The notice stated that PFIC shareholders with Form 8621 reporting obligations as provided in the then-current Instructions to Form 8621 were required to continue filing Form 8621 with an income tax or information return filed prior to the release of the revised Form 8621. Notice 2011-55 further provided that following the release of revised Form 8621, PFIC shareholders for which the filing of Form 8621 had been suspended under the notice would be required to attach Form 8621 for the suspended taxable year to their next income tax or information return required to be filed with the IRS. The notice also provided that a failure to furnish Form 8621 for a suspended taxable year could result in the extension of the statute of limitations for such year under section 6501(c)(8), and penalties could apply. However, since Notice 2011-55 was issued, the IRS and the Treasury Department have determined that it is not necessary for taxpayers to file a Form 8621 under section 1298(f) for suspended taxable years. Accordingly, these regulations provide that PFIC shareholders are not required to file Form 8621 under section 1298(f) with respect to taxable years ending before December 31, 2013.

This document contains amendments to 26 CFR part 1 under sections 1291 and 1298. Although comments were received on the 1992 proposed regulations, none relate to the specific issues addressed in these temporary regulations. These temporary regulations generally adopt certain

portions of the 1992 proposed regulations, some of which are revised to take into account statutory changes. This preamble discusses these revisions but does not discuss comments concerning other rules in the 1992 proposed regulations, which are beyond the scope of these temporary regulations. These temporary regulations also set forth the filing requirements under section 1298(f), including the time and manner for filing Form 8621 for taxable years ending on or after December 31, 2013.

#### B. Sections 6038 and 6046

This document contains amendments to 26 CFR part 1 under sections 6038 and 6046. Sections 6038 and 6046 set forth information return reporting requirements applicable to certain United States persons that own an interest in foreign corporations and certain United States persons that are officers and directors of the foreign corporations. These temporary regulations provide guidance on an exception to the requirement to file Form 5471 under sections 6038 and 6046 that is applicable to certain United States persons that own an interest in a foreign corporation under constructive ownership rules.

In addition, these regulations take into account statutory changes in section 1012(i) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647, 102 Stat. 3342) and section 1146(a) of the Taxpayer Relief Act. The first statutory change relates to the requirement for persons treated as United States shareholders under section 953(c) to file an information return under section 6046. This requirement was added to the Code in 1988, shortly after section 953(c) was added to the Code by the Tax Reform Act of 1986 (Public Law 99-514, 100 Stat. 2085). On April 17, 1991, the **Federal Register** published proposed regulations (56 FR 15540; INTL-939-86; REG-208289-86) under sections 953 and 6046 concerning, among other things, the requirements for persons treated as United States shareholders under section 953(c) to file an information return with respect to the CFC, and for certain United States persons that are officers and directors of such CFCs to file an information return (“1991 proposed regulations”). These regulations finalize § 1.6046-1 of the 1991

proposed regulations (REG-116180-12; RIN 1545-BK91) without substantive changes. The other portions of the 1991 proposed regulations (REG-123286-13; RIN 1545-BL63) remain in proposed form.

The second statutory change relates to the ownership threshold for reporting set forth in section 6046. Prior to the modifications made by the Taxpayer Relief Act, the stock ownership threshold at which reporting was required under section 6046 was 5 percent. These regulations revise § 1.6046-1 to reflect the 10 percent ownership threshold change that was made in the Taxpayer Relief Act. In addition, these regulations revise the examples to reflect the 10 percent ownership threshold. Finally, these regulations revise § 1.6046-1 to reflect the current name and form number of the information return required to be filed pursuant to section 6046.

### Explanation of Provisions

#### A. Section 1291

##### 1. Definition of *pedigreed QEF*

Prop. Treas. Reg. § 1.1291-1(b)(2)(ii) of the 1992 proposed regulations defines the term *pedigreed QEF*, and § 1.1291-9(j)(2)(ii) contains a similar definition of the term. Section 1.1291-1T(b)(2)(ii) adopts the 1992 proposed regulations’ definition of *pedigreed QEF* without substantive modification to be consistent with the definition of *pedigreed QEF* in § 1.1291-9(j)(2)(ii). The definition of *pedigreed QEF* in the 1992 proposed regulations is withdrawn in this issue of the **Bulletin**.

##### 2. Definition of *section 1291 fund*

Prop. Treas. Reg. § 1.1291-1(b)(2)(v) of the 1992 proposed regulations defines the term *section 1291 fund* as an *unpedigreed QEF* or a *nonqualified fund*. These temporary regulations adopt the 1992 proposed regulations’ definition of *section 1291 fund* with some modifications to reflect the enactment of the MTM rules under section 1296, which occurred after the 1992 proposed regulations were published. Under § 1.1291-1T(b)(2)(v), a PFIC is a *section 1291 fund* with respect to a shareholder unless the PFIC is a *pedigreed QEF* with respect to the shareholder or a *section 1296*

election is in effect with respect to the shareholder. The definition of section 1291 fund in the 1992 proposed regulations is withdrawn in this issue of the **Bulletin**.

### 3. Definitions of shareholder and indirect shareholder

Prop. Treas. Reg. § 1.1291-1(b)(7) and (b)(8) of the 1992 proposed regulations define the terms shareholder and indirect shareholder for purposes of section 1291. These definitions are cross-referenced in the definition of shareholder provided in § 1.1291-9(j)(3). However, § 1.1295-1(j) defines shareholder for QEF purposes, and section 1296(g) and § 1.1296-1(e) provide a separate set of attribution rules for purposes of applying the MTM rules to United States persons that own an interest in a PFIC.

These temporary regulations generally adopt the definition of shareholder provided in the 1992 proposed regulations. Under § 1.1291-1T(b)(7), the term *shareholder* means any United States person that owns stock of a PFIC directly or indirectly. For purposes of these regulations, a domestic partnership or an S corporation is treated as a shareholder of a PFIC only for purposes of the information reporting requirements of sections 1291 and 1298, including section 1298(f). In addition, these regulations provide that a domestic grantor trust is treated as a shareholder of a PFIC only for purposes of the information reporting requirement set forth at § 1.1298-1T(b)(3)(i), which applies to domestic liquidating trusts and fixed investment trusts.

These temporary regulations revise certain aspects of the definition of indirect shareholder in the 1992 proposed regulations and adopt other aspects of the definition without amendment. Section 1.1291-1T(b)(8) defines the term *indirect shareholder* as a United States person that indirectly owns stock in a PFIC and provides rules for attributing ownership of PFIC stock through corporations, partnerships, S corporations, estates, and trusts. The rule in the 1992 proposed regulations concerning ownership through a PFIC has been revised in § 1.1291-1T(b)(8)(ii)(B) to incorporate a statutory change to section 1298(a)(2)(B) made in the Taxpayer Relief Act, which provides that section 1297(d)

does not apply for purposes of determining whether a United States person owns a PFIC indirectly through a foreign corporation. Thus, in the case of a person that owns stock of a PFIC that is also a CFC, notwithstanding that under section 1297(d) such corporation may not be treated as a PFIC with respect to certain shareholders, the foreign corporation is treated as a PFIC with respect to the shareholder for purposes of determining whether the shareholder owns an interest in any stock of a PFIC held by the foreign corporation.

These temporary regulations make certain changes to the rules in the 1992 proposed regulations for attributing ownership of PFIC stock through partnerships, estates, and trusts. The 1992 proposed regulations generally provide that in the case of a partnership, S corporation, estate, or trust that directly or indirectly owns stock, the partners, shareholders, or beneficiaries (as the case may be) are considered to own a proportionate amount of such stock. These temporary regulations clarify that the attribution rules apply to both domestic and foreign partnerships, estates, and trusts.

These temporary regulations also provide special rules for nongrantor trusts and grantor trusts. In particular, Treas. Reg. § 1.1291-1T(b)(8)(iii)(D) provides that if a foreign or domestic grantor trust directly or indirectly owns PFIC stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own an interest in the stock held by that portion of the trust. In addition, Treas. Reg. § 1.1291-1T(b)(8)(iii)(C) provides that, in general, if a foreign or domestic estate or nongrantor trust directly or indirectly owns PFIC stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock. The cross-referenced notice of proposed rulemaking on this subject in this issue of the **Bulletin** requests comments on the determination of proportionate ownership by a beneficiary of PFIC stock held by a domestic or foreign estate or nongrantor trust. Until further guidance is provided on estate and trust attribution rules, beneficiaries of estates and nongrantor trusts that hold PFIC stock subject to the section 1291 regime should use a reasonable method to determine their ownership interests in a PFIC held by the estate or non-

grantor trust. Moreover, until further guidance is provided, beneficiaries of estates and nongrantor trusts that are subject to the section 1291 regime with respect to PFIC stock held by the estate or nongrantor trust are exempt from section 1298(f) filing requirements for taxable years in which the beneficiary is not treated as receiving an excess distribution (within the meaning of section 1291(b)) or as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) with respect to the stock of the PFIC that the beneficiary is considered to own through the estate or trust. See, for example, § 1.1298-1T(b)(3)(iii).

These temporary regulations do not provide guidance on the application of section 1291 when an estate or nongrantor trust, or beneficiary thereof, receives, or is treated as receiving, an excess distribution (including an amount of gain treated as an excess distribution). Section 1291 and the principles of subchapter J must, however, be applied in a reasonable manner with respect to estates and trusts, and beneficiaries thereof, to preserve or trigger the tax and interest charge rules under section 1291. Accordingly, until further guidance is issued, the estate or trust, or the beneficiary thereof, must take excess distributions into account under section 1291 in a reasonable manner, consistent with the general operating rules of subchapter J. It would be unreasonable for the shareholders of the section 1291 fund to take the position that neither the beneficiaries nor the estate or trust are subject to the tax and interest charge rules under section 1291. The definitions in the 1992 proposed regulations of shareholder and indirect shareholder are withdrawn in this issue of the **Bulletin**.

As stated earlier, the term shareholder is defined in § 1.1291-9(j)(3) by cross-reference to the definitions of shareholder and indirect shareholder set forth in the 1992 proposed regulations. Certain other provisions, including §§ 1.1291-10(a), 1.1297-3(a), and 1.1298-3(a), cross-reference the definition of shareholder in § 1.1291-9(j)(3). These temporary regulations include a definition of shareholder in § 1.1291-9T(j)(3) that cross-references the definitions of shareholder and indirect shareholder in § 1.1291-1T(b)(7) and (b)(8). In addition, § 1.1291-9(j)(3) is amended to cross-reference the

definition of shareholder in § 1.1291-9T(j)(3) rather than the definitions of shareholder and indirect shareholder in the 1992 proposed regulations. Accordingly, the § 1.1291-1T(b) definition of shareholder applies for purposes of sections 1291 and 1298(f) as well as other provisions that cross-reference § 1.1291-9(j)(3).

## B. Section 1298(f)

### 1. General filing requirement under section 1298(f)

Except as otherwise provided by the Secretary, section 1298(f) requires a United States person that is a shareholder of a PFIC to file an annual report containing such information as the Secretary may require. These temporary regulations generally require a United States person that is a shareholder of a PFIC to complete and file Form 8621 (or successor form). The requirement to file Form 8621 under these temporary regulations applies to a shareholder that owns an interest in a PFIC at any time during the shareholder's taxable year, regardless of whether the PFIC has a taxable year ending within the shareholder's taxable year. These temporary regulations generally require the United States person that is at the lowest tier in a chain of ownership, and that is a shareholder (including an indirect shareholder) of a PFIC, to file an annual report on Form 8621. In addition, a United States person that owns PFIC stock through another United States person also is required to file an annual report in certain circumstances, including when that person is required to include an amount in income with respect to the PFIC or when that person is subject to tax under section 1291 as a result of being treated as receiving an excess distribution or as recognizing gain that is treated as an excess distribution with respect to the PFIC. For example, if a United States citizen owns an interest in a domestic partnership, which, in turn, owns an interest in a PFIC, the domestic partnership is required to file an annual report because the domestic partnership is the United States person that is at the lowest tier in the chain of ownership. In addition, the United States citizen is required to file an annual report when such person is treated as receiving an excess distribution or as recognizing gain that is

treated as an excess distribution with respect to the PFIC.

In order to eliminate certain duplicative reporting obligations, these regulations provide an exception to the rule that requires a United States person that owns an interest in a PFIC through another United States person to submit an annual report. In particular, under § 1.1298-1T(b)(2)(ii), a United States person that is required to include an amount in income only under the QEF or MTM rules with respect to PFIC stock held through other United States persons generally is not required to file an annual report under section 1298(f) with respect to the PFIC if another shareholder through which the United States person holds the PFIC stock timely files an annual report under section 1298(f) with respect to the PFIC. This exception does not apply, however, if the United States person made a QEF election with respect to the PFIC and then transferred the shares of the PFIC to a domestic partnership or S corporation that did not itself make a QEF election with respect to the PFIC.

The section 1298(f) filing requirements set forth in these temporary regulations generally apply to domestic estates, domestic nongrantor trusts, and United States persons that are treated under sections 671 through 679 as owners of any portion of foreign and domestic grantor trusts. In general, domestic estates and nongrantor trusts are required to file an annual report (subject to the exceptions provided in these regulations) under the rules generally applicable to United States persons, which are set forth in § 1.1298-1T(b)(1) and (b)(2). United States persons that are treated as the owners of domestic and foreign grantor trusts that own PFIC stock generally are required to file an annual report under § 1.1298-1T(b)(1) and (b)(2) (subject to the exceptions provided in these regulations).

However, a United States person that is treated as the owner of any portion of a domestic liquidating trust described in § 301.7701-4(d) of this chapter and created pursuant to a court order issued in bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq.*) of the Bankruptcy Code or pursuant to a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq.*) of the Bankruptcy Code, or of any portion of a

domestic widely held fixed investment trust under § 1.671-5, is not required to file Form 8621 under section 1298(f) and these regulations with respect to any PFICs owned by such trust. In such a case, § 1.1298-1T(b)(3)(i) provides that the trust itself must file Form 8621.

Further, § 1.1298-1T(b)(3)(ii) provides that the filing requirement under section 1298(f) does not apply to a United States person that is treated as the owner of any portion of a foreign grantor trust that is a foreign pension fund operated principally to provide pension or retirement benefits, if, pursuant to an income tax convention to which the United States is a party, income earned by the pension fund is taxed as income of the United States person only when and to the extent it is paid to, or for the benefit of, the United States person.

United States persons that are beneficiaries of foreign estates and nongrantor trusts and that have made elections under section 1295 or 1296 with respect to PFIC stock held by the estate or trust are required to file an annual report under these regulations (subject to the exceptions provided in these regulations) with respect to the PFIC. United States persons that are beneficiaries of domestic estates and nongrantor trusts that hold PFIC stock, which have made elections under section 1295 or 1296 with respect to the PFIC stock, generally are required to file an annual report under these regulations (subject to the exceptions provided in these regulations) with respect to the PFIC only if the estate or trust (and any other United States person in the chain of ownership) fails to file an annual report under these regulations. In addition, United States persons that are beneficiaries of domestic and foreign estates and nongrantor trusts are required to file an annual report under these regulations (subject to the exceptions provided in these regulations) for taxable years in which the beneficiary is treated as receiving an excess distribution (under section 1291(b)) or recognizing gain treated as an excess distribution (under section 1291(a)(2)) with respect to PFIC stock held by the estate or trust.

## 2. Exception for tax exempt organizations

A United States person that qualifies as a tax exempt organization under certain Code provisions may own an interest in a PFIC but may not be subject to tax under subchapter F of Subtitle A of the Code (addressing exempt organizations) with respect to the PFIC. In such a case, the United States person is not required to file an annual report under section 1298(f) and these regulations with respect to the PFIC. Specifically, § 1.1298-1T(c)(1) provides that a shareholder that is an organization exempt under section 501(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), or a qualified tuition program described in section 529 or 530 is required to file an annual report under section 1298(f) with respect to a PFIC only if the income derived with respect to the PFIC would be taxable to the organization under subchapter F of Subtitle A of the Code.

### 3. \$25,000 and \$5,000 exceptions

A comment letter was received that requested the IRS and the Treasury Department to exercise the authority to promulgate exceptions to the filing requirements set forth under section 1298(f). These temporary regulations provide exceptions to the section 1298(f) filing requirements to address the concerns underlying the comment. Section 1.1298-1T(c)(2)(i) provides exceptions to the requirement to file an annual report under section 1298(f) and these regulations for certain shareholders with respect to an interest owned in a PFIC for which the shareholder is subject to tax only under section 1291 (that is, no QEF or MTM election is in effect with respect to the shareholder). Under § 1.1298-1T(c)(2)(i), this exception applies with respect to a PFIC only if: (i) the shareholder is not subject to tax under section 1291 with respect to any excess distributions received from the PFIC, or gains derived with respect to the PFIC that are treated as excess distributions, during the taxable year of the

shareholder (§ 1.1298-1T(c)(2)(i)(B)); and (ii) either (A) the aggregate value of all PFIC stock owned by the shareholder at the end of the taxable year of the shareholder does not exceed \$25,000, or (B) the PFIC stock is owned by the shareholder through another PFIC, and the value of the shareholder's proportionate share of the upper-tier PFIC's interest in the lower-tier PFIC does not exceed \$5,000. The \$25,000 threshold in § 1.1298-1T(c)(2)(i)(A)(I) is increased to \$50,000 for shareholders who file a joint return.

These temporary regulations provide special rules for determining whether the \$25,000 threshold is met in the case of indirect ownership. Under § 1.1298-1T(c)(2)(ii), shareholders must take into account all PFIC stock owned directly or indirectly except for PFIC stock owned through another United States person that itself is a shareholder of the PFIC. Moreover, for these purposes, shareholders would not take into account PFIC stock owned through another PFIC because the value of the stock of the lower tier PFIC is reflected in the value of the upper tier PFIC stock.

Shareholders are not required to obtain an appraisal in order to determine the value of PFIC stock. Section 1.1298-1T(c)(2)(iv) provides that shareholders may rely upon periodic account statements provided at least annually to determine the value of a PFIC unless the shareholder has reason to know that the statements do not reflect a reasonable estimate of the PFIC's value.

### C. Time and Manner for Filing Form 8621

Section 1298(f) was effective on March 18, 2010. As stated earlier, Notice 2010-34 provided that PFIC shareholders that were not otherwise required to file Form 8621 prior to March 18, 2010, would not be required to file an annual report under section 1298(f) for taxable years beginning before March 18, 2010. Furthermore, Notice 2011-55 suspended the requirement to file an annual report under section 1298(f) for taxable years beginning on or after March 18, 2010, for PFIC shareholders that were not otherwise required to file Form 8621 under the then-

current Instructions to Form 8621. Section 1.1298-1T(c)(3) provides that United States persons are not required under section 1298(f) and these regulations to file an annual report with respect to a PFIC for a taxable year of the United States person ending before December 31, 2013. The rules described in Notice 2011-55 for suspended taxable years (as defined in Notice 2011-55) with respect to section 1298(f) and Form 8621 are no longer applicable. For taxable years ending on or after December 31, 2013, a shareholder that is required to file Form 8621 under these regulations with respect to a PFIC that it owns during a taxable year must attach Form 8621 to its Federal income tax return (or, if applicable, partnership or exempt organization return) for such taxable year. See § 1.1298-1T(d). Although Notice 2011-55 is no longer applicable with respect to section 1298(f) and Form 8621, these regulations do not affect Notice 2011-55 with respect to filing requirements under section 6038D (relating to Form 8938).

These temporary regulations provide that if a United States person is required to file Form 8621 with respect to more than one PFIC, the United States person must file a separate Form 8621 for each PFIC. However, United States persons that file a joint return may file a single Form 8621 with respect to a PFIC in which they jointly or individually own an interest. See § 1.1298-1T(e).

A revised Form 8621 has been released and the Instructions to the form will be modified to reflect the filing requirements under section 1298(f) and these regulations.

### D. Coordination With Other Filing Requirements

#### 1. Coordination with other PFIC filing requirements

A shareholder may be required to file Form 8621 pursuant to provisions other than those under section 1298(f) and these temporary regulations. For example, § 1.1295-1(f)(2)(i) requires a shareholder to file Form 8621 annually in connection with the shareholder's QEF election. Moreover, a shareholder must file Form 8621 in order to make certain elections

(such as a deemed sale election pursuant to § 1.1297-3(b)(4)). Nothing in section 1298(f) or these regulations relieves a person from the obligation to file Form 8621 under any other provision. If a shareholder is required to file Form 8621 (or successor form) with respect to a PFIC pursuant to section 1298(f) and these regulations, as well as another information reporting obligation, the shareholder may file a single Form 8621 that contains all of the required information.

## 2. Coordination with section 6038D

Section 6038D requires an individual who holds any interest in a specified foreign financial asset (as defined in section 6038D(b)) during any taxable year to provide information with respect to such asset. Certain United States persons that own an interest in a PFIC may be subject to the information reporting requirements of both sections 1298(f) and 6038D with respect to the PFIC interest. The regulations under section 6038D provide guidance coordinating the two reporting requirements to eliminate duplicative reporting. See §§ 1.6038D-1T through 1.6038D-8T for rules relating to section 6038D reporting. Pursuant to those regulations, in order to avoid duplicative reporting of assets, a United States person is not required to report a PFIC under section 6038D if the person reports the PFIC on a timely filed Form 8621 and the person's report under section 6038D (on Form 8938) indicates, as provided on the form, that the person complied with its Form 8621 filing requirement with respect to the PFIC.

## E. Form 5471 Filing Obligations

Pursuant to sections 6038 and 6046, certain United States persons are required to file an information return on Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations," with respect to their ownership in certain foreign corporations or because they are an officer or director of certain foreign corporations.

### 1. Constructive ownership exception

Certain United States persons otherwise required to file Form 5471 do not

have to file if: (i) the United States person does not directly own an interest in the foreign corporation, (ii) the United States person would otherwise be required to furnish the information solely by reason of attribution of stock ownership from a United States person, and (iii) the person from whom the stock ownership is attributed furnishes all of the information required to be reported by the person to whom the stock ownership is attributed ("constructive ownership exception"). See §§ 1.6038-2(j)(2) and 1.6046-1(e)(4)(iii). In addition, pursuant to §§ 1.6038-2(j)(3) and 1.6046-1(e)(5), shareholders that are excepted from filing Form 5471 under the constructive ownership exception have been required to file a statement with their returns indicating that the requirement to provide information has been satisfied and identifying the return with which the information was or will be filed and the place of filing. The IRS believes that this statement is not necessary. Accordingly, these temporary regulations remove the requirement to file a statement in circumstances where a United States person qualifies for the constructive ownership exception. See §§ 1.6038-2T(j)(3) and 1.6046-1T(e)(5).

### 2. Section 953(c) shareholders

As discussed earlier, the requirement to file an information return for persons treated as United States shareholders under section 953(c), as well as certain United States persons that are officers and directors of the CFC, was added to the Code in 1988. The 1991 proposed regulations addressed these new filing requirements.

These regulations finalize § 1.6046-1(a)(2) and (c) to reflect the additional filing requirement imposed on United States persons treated as section 953(c) shareholders, and officers and directors of CFCs that have United States persons treated as section 953(c) shareholders, without any substantive changes from the 1991 proposed regulations.

### 3. Changes to conform the Section 6046 regulations to the Code and current information return form

Section 6046(a)(1)(B) through (D) mandates the filing of an information re-

turn by United States persons that: (i) acquire 10 percent or more of the stock of a foreign corporation; (ii) acquire stock, which, when added to any stock owned on the date of acquisition, equals 10 percent or more of the stock of the foreign corporation; (iii) are treated as a United States shareholder under section 953(c) with respect to a foreign corporation; or (iv) become a United States person while owning 10 percent or more of the stock of a foreign corporation. As discussed earlier, prior to the modifications made by the Taxpayer Relief Act, the stock ownership threshold at which reporting was required was 5 percent. Section 1.6046-1 was published in 1962, when the stock ownership threshold was 5 percent. These regulations revise § 1.6046-1 to reflect the 10 percent ownership threshold change that was made in the Taxpayer Relief Act. These regulations also revise the examples to reflect the 10 percent ownership threshold.

In addition, several paragraphs of § 1.6046-1 reference "Form 959", *Return by an Officer, Director, or Shareholder with Respect to the Organization or Reorganization of a Foreign Corporation and Acquisition of Stock*. Form 959 was replaced in 1983 by Form 5471. These regulations modify § 1.6046-1 to reference Form 5471 (or subsequent form), rather than Form 959, and remove § 1.6046-1(f)(4), which described Form 959.

## Effect on Other Documents

Notice 2010-34 (2010-1 CB 612) is obsolete as of December 31, 2013. Notice 2011-55 (2011-29 CB 663) is partially obsolete as of December 31, 2013. Notice 2011-55 is only obsolete with respect to section 1298(f) and Form 8621. Notice 2011-55 continues to be in effect with respect to section 6038D and Form 8938.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5

U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Bulletin**. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal authors of these regulations are Barbara E. Rasch and Susan E. Massey of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order as follows:

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

Sections 1.1291–1T, 1.1291–9, 1.1291–9T, and 1.1298–1T also issued under 26 U.S.C. 1298(a) and (g) \* \* \*

Section 1.1298–1T also issued under 26 U.S.C. 1298(f) and (g) \* \* \*

Section 1.6038–2T also issued under 26 U.S.C. 6038(d) \* \* \*

Section 1.6046–1T also issued 26 U.S.C. 6046(b) \* \* \*

Par. 2. Section 1.1291–0T is added to read as follows:

*§ 1.1291–0T Passive foreign investment company – table of contents (temporary).*

This section lists the table of contents for §§ 1.1291–1T and 1.1291–9T.

*§ 1.1291–1T Taxation of United States persons that are shareholders of section 1291 funds (temporary).*

- (a) through (b)(2)(i) [Reserved].
- (ii) Pedigreed QEF.
- (b)(2)(iii) and (iv) [Reserved].
- (v) Section 1291 fund.
- (3) through (6) [Reserved].
- (7) Shareholder.
- (8) Indirect shareholder.
  - (i) In general.
  - (ii) Ownership through a corporation.
    - (A) Ownership through a non-PFIC foreign corporation.
    - (B) Ownership through a PFIC.
    - (C) Ownership through a domestic corporation.
    - (iii) Ownership through pass-through entities.
      - (A) Partnerships.
      - (B) S Corporations.
      - (C) Estates and nongrantor trusts.
      - (D) Grantor trusts.
  - (c) through (j) [Reserved].
  - (k) Effective/applicability dates.

*§ 1.1291–9T Deemed dividend election (temporary).*

- (a) through (j)(2) [Reserved].
- (3) Shareholder.
- (k) Effective/applicability date.

Par. 3 Section 1.1291–1T is added to read as follows:

*§ 1.1291–1T Taxation of United States persons that are shareholders of section 1291 funds (temporary).*

- (a) through (b)(2)(i) [Reserved].
- (ii) *Pedigreed QEF*. A PFIC is a *pedigreed QEF* with respect to a shareholder if the PFIC has been a QEF with respect to the shareholder for all taxable years during which the corporation was a PFIC that are included wholly or partly in the shareholder's holding period of the PFIC stock.
  - (b)(2)(iii) and (iv) [Reserved].
  - (v) *Section 1291 fund*. A PFIC is a *section 1291 fund* with respect to a shareholder unless the PFIC is a pedigreed QEF with respect to the shareholder or a section 1296 election is in effect with respect to the shareholder.
  - (3) through (6) [Reserved].

(7) *Shareholder*. A *shareholder* is a United States person that directly owns stock of a PFIC (a direct shareholder), or that is an indirect shareholder (as defined in section 1298(a) and paragraph (b)(8) of this section). For purposes of sections 1291 and 1298, a domestic partnership or S corporation (as defined in section 1361) is not treated as a shareholder of a PFIC except for purposes of any information reporting requirements, including the requirement to file an annual report under section 1298(f). In addition, to the extent that a person is treated under sections 671 through 678 as the owner of a portion of a domestic trust, the trust is not treated as a shareholder of a PFIC with respect to PFIC stock held by that portion of the trust, except for purposes of the information reporting requirements of § 1.1298–1T(b)(3)(i) (imposing an information reporting requirement on domestic liquidating trusts and fixed investment trusts).

(8) *Indirect shareholder*—(i) *In general*. An *indirect shareholder* of a PFIC is a United States person that indirectly owns stock of a PFIC. A person indirectly owns stock when it is treated as owning stock of a corporation owned by another person, including another United States person, under this paragraph (b)(8). In applying this paragraph (b)(8), the determination of a person's indirect ownership is made on the basis of all the facts and circumstances in each case; the substance rather than the form of ownership is controlling, taking into account the purpose of sections 1291 through 1298.

(ii) *Ownership through a corporation*—(A) *Ownership through a non-PFIC foreign corporation*. A person that directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the foreign corporation.

(B) *Ownership through a PFIC*. A person that directly or indirectly owns stock of a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the PFIC. Section 1297(d) shall not apply in determining whether a corporation is a PFIC for purposes of this paragraph (b)(8)(ii)(B).

(C) *Ownership through a domestic corporation.* Except as provided in paragraph (b)(8)(iii)(B) of this section, if stock of a section 1291 fund is not treated as owned indirectly by a United States person under this paragraph (b)(8) (determined without regard to this paragraph (b)(8)(ii)(C)), but would be treated as owned by a United States person if paragraph (b)(8)(ii)(A) of this section applied to domestic corporations as well as foreign corporations, then the stock is considered owned by the United States person.

(iii) *Ownership through pass-through entities—(A) Partnerships.* If a foreign or domestic partnership directly or indirectly owns stock, the partners of the partnership are considered to own such stock proportionately in accordance with their ownership interests in the partnership.

(B) *S Corporations.* If an S corporation directly or indirectly owns stock, each S corporation shareholder is considered to own such stock proportionately in accordance with the shareholder's ownership interest in the S corporation.

(C) *Estates and nongrantor trusts.* If a foreign or domestic estate or nongrantor trust (other than an employees' trust described in section 401(a) that is exempt from tax under section 501(a)) directly or indirectly owns stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock. For purposes of this paragraph (b)(8)(iii)(C), a nongrantor trust is any trust or portion of a trust that is not treated as owned by one or more persons under sections 671 through 679.

(D) *Grantor trusts.* If a foreign or domestic trust directly or indirectly owns stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own the interest in the stock held by that portion of the trust.

- (c) (1) and (2) [Reserved].
- (3) [Reserved]. For further guidance, see § 1.1291-1(c)(3).
- (d) [Reserved].
- (e) [Reserved]. For further guidance, see § 1.1291-1(e).
- (f) through (i) [Reserved].
- (j) [Reserved]. For further guidance, see § 1.1291-1(j).

(k) *Effective/applicability dates.* Paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), and (b)(8) of this section apply to taxable years of shareholders ending on or after December 31, 2013.

(l) *Expiration date.* The applicability of paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), and (b)(8) of this section expires on December 30, 2016.

Par. 4. Section 1.1291-9 is amended by revising paragraph (j)(3) and adding paragraph (k)(3) to read as follows:

*§ 1.1291-9 Deemed dividend election.*

\* \* \* \* \*

(j) \* \* \*

(3) [Reserved]. For further guidance see § 1.1291-9T(j)(3).

(k) \* \* \*

(3) [Reserved]. For further guidance see § 1.1291-9T(k)(3).

Par. 5. Section 1.1291-9T is added to read as follows:

*§ 1.1291-9T Deemed dividend election (temporary).*

(a) through (j)(2) [Reserved]. For further guidance see § 1.1291-9(a) through (j)(2).

(3) *Shareholder.* A *shareholder* is a United States person that is a shareholder as defined in § 1.1291-1T(b)(7) or an indirect shareholder as defined in § 1.1291-1T(b)(8).

(k) *Effective/applicability date—(1)* [Reserved]. For further guidance see § 1.1291-9(k)(1).

(2) [Reserved]. For further guidance see § 1.1291-9(k)(2).

(3) Paragraph (j)(3) of this section applies to taxable years of shareholders ending on or after December 31, 2013.

(l) *Expiration date.* The applicability of paragraph (j)(3) of this section expires on December 30, 2016.

Par. 6. Section 1.1298-0T is added to read as follows:

*§ 1.1298-0T Passive foreign investment company – table of contents (temporary).*

This section lists the table of contents for § 1.1298-1T.

*§ 1.1298-1T Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company (temporary).*

- (a) Overview.
- (b) Requirement to file.
  - (1) General rule.
  - (2) Additional requirement to file for certain indirect shareholders.
    - (i) General rule.
    - (ii) Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.
    - (3) Special rules for estates and trusts.
      - (i) Domestic liquidating trusts and fixed investment trusts.
      - (ii) Foreign pension funds.
      - (iii) Beneficiaries of foreign estates and trusts.
  - (c) Exceptions.
    - (1) Exception if shareholder is a tax exempt entity.
    - (2) Exception if aggregate value of shareholder's PFIC stock is \$25,000 or less, or value of shareholder's indirect PFIC stock is \$5,000 or less.
      - (i) General rule.
      - (ii) Determination of the \$25,000 threshold in the case of indirect ownership.
      - (iii) Application of the \$25,000 exception to shareholders who file a joint return.
      - (iv) Reliance on periodic account statements.
    - (3) Exception for taxable years ending before December 31, 2013.
    - (d) Time and manner for filing.
    - (e) Separate annual report for each PFIC.
      - (1) General rule.
      - (2) Special rule for shareholders who file a joint return.
    - (f) Coordination rule.
    - (g) Examples.
    - (h) Effective/applicability date.

Par. 7. Section 1.1298-1T is added to read as follows:

*§ 1.1298-1T Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company (temporary).*

(a) *Overview.* This section provides rules regarding the reporting requirements under section 1298(f) applicable to a

United States person that is a shareholder (as defined in § 1.1291-1T(b)(7)) of a passive foreign investment company (PFIC). Paragraph (b) of this section provides the section 1298(f) annual reporting requirements generally applicable to United States persons. Paragraph (c) of this section sets forth exceptions to reporting for certain shareholders that are tax exempt entities, that own PFIC stock with an aggregate value of \$25,000 or less, or that own certain PFIC stock with a value of \$5,000 or less, and provides an exception to reporting for all shareholders for taxable years ending before December 31, 2013. Paragraph (d) of this section provides rules regarding the time and manner of filing the annual report. Paragraph (e) of this section sets forth the requirement to file a separate annual report with respect to each PFIC. Paragraph (f) of this section coordinates the requirement to file an annual report under section 1298(f) with the requirement to file an annual report under other provisions of the Internal Revenue Code (Code). Paragraph (g) of this section sets forth examples illustrating the application of this section.

(b) *Requirement to file*—(1) *General rule*. Except as otherwise provided in this section, a United States person that is a shareholder of a PFIC must complete and file Form 8621, “Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund” (or successor form), under section 1298(f) and these regulations for the PFIC if, during the shareholder’s taxable year, the shareholder—

(i) Directly owns stock of the PFIC;

(ii) Is an indirect shareholder under § 1.1291-1T(b)(8) that holds any interest in the PFIC through one or more entities, each of which is foreign; or

(iii) Is an indirect shareholder under § 1.1291-1T(b)(8)(iii)(D) that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly through one or more entities, each of which is foreign, any interest in the PFIC.

(2) *Additional requirement to file for certain indirect shareholders*—(i) *General rule*. Except as otherwise provided in this section, an indirect shareholder that owns an interest in a PFIC through one or

more United States persons also must file Form 8621 (or successor form) with respect to the PFIC under section 1298(f) and these regulations if, during the indirect shareholder’s taxable year, the indirect shareholder is—

(A) Treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the PFIC;

(B) Treated as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) as a result of a disposition of the PFIC;

(C) Required to include an amount in income under section 1293(a) with respect to the PFIC (QEF inclusion);

(D) Required to include an amount in income under section 1296(a) with respect to the PFIC (MTM inclusion); or

(E) Required to report the status of a section 1294 election with respect to the PFIC (see § 1.1294-1T(h)).

(ii) *Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions*. Except as otherwise provided in this paragraph (b)(2)(ii), the filing requirements under paragraph (b)(2)(i)(C) and (D) of this section do not apply with respect to a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) or (b)(2)(i)(D) of this section if another shareholder through which the indirect shareholder owns an interest in the PFIC timely files Form 8621 (or successor form) with respect to the PFIC under paragraph (b)(1) or (b)(2) of this section. However, the exception in this paragraph (b)(2)(ii) does not apply with respect to a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) of this section that owns the PFIC through a domestic partnership or S corporation if the domestic partnership or S corporation does not make a qualified electing fund election with respect to the PFIC (see § 1.1293-1(c)(2)(ii), addressing QEF stock transferred to a pass through entity that does not make a section 1295 election).

(3) *Special rules for estates and trusts*—(i) *Domestic liquidating trusts and fixed investment trusts*. A United States person that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly, any interest in a PFIC is not

required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC if the trust is either a domestic liquidating trust under § 301.7701-4(d) of this chapter created pursuant to a court order issued in a bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq.*) of the Bankruptcy Code or a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq.*) of the Bankruptcy Code, or a widely held fixed investment trust under § 1.671-5. Such a trust is treated as a shareholder for purposes of section 1298(f) and these regulations, and thus, except as otherwise provided in this section, the trust is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC as provided in paragraphs (b)(1) and (b)(2) of this section.

(ii) *Foreign pension funds*. A United States person that is treated as the owner of any portion of a trust described in section 7701(a)(31)(B) that owns, directly or indirectly, any interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC if the foreign trust is a foreign pension fund (including a foreign pension fund that is an individual retirement plan) operated principally to provide pension or retirement benefits, and, pursuant to an income tax convention to which the United States is a party, income earned by the pension fund may be taxed as the income of the owner of the trust only when and to the extent the income is paid to, or for the benefit of, the owner.

(iii) *Beneficiaries of foreign estates and trusts*. A United States person that is considered to own an interest in a PFIC because it is a beneficiary of an estate described in section 7701(a)(31)(A) or a trust described in section 7701(a)(31)(B) that owns, directly or indirectly, stock of a PFIC, and that has not made an election under section 1295 or 1296 with respect to the PFIC, is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the stock of the PFIC that it is considered to own through the estate or trust if, during the beneficiary’s taxable year, the beneficiary is not treated as receiving an excess distribution (within the meaning of section 1291(b)) or as recognizing gain

that is treated as an excess distribution (under section 1291(a)(2)) with respect to the stock.

(c) *Exceptions*—(1) *Exception if shareholder is a tax exempt entity.* A shareholder that is an organization exempt under section 501(a) because it is described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), or a qualified tuition program described in section 529 or 530 is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC unless the income derived with respect to the PFIC stock would be taxable to the organization under subchapter F of Subtitle A of the Code.

(2) *Exception if aggregate value of shareholder's PFIC stock is \$25,000 or less, or value of shareholder's indirect PFIC stock is \$5,000 or less*—(i) *General rule.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a section 1291 fund (as defined in § 1.1291-1T(b)(2)(v)) for a shareholder's taxable year if—

(A) On the last day of the shareholder's taxable year,

(1) The value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291-1T(b)(8) by the shareholder is \$25,000 or less; or

(2) The section 1291 fund stock is indirectly owned by the shareholder under section 1298(a)(2)(B) and § 1.1291-1T(b)(8)(ii)(B), and the value of the section 1291 fund stock indirectly owned by the shareholder is \$5,000 or less;

(B) The shareholder is not treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the section 1291 fund during the taxable year or as recognizing gain treated as an excess distribution under section 1291(a)(2) as the result of a disposition of the section 1291 fund during the taxable year; and

(C) An election under section 1295 has not been made to treat the section 1291 fund as a qualified electing fund with respect to the shareholder.

(ii) *Determination of the \$25,000 threshold in the case of indirect ownership.* For purposes of determining the value of stock held by a shareholder for purposes of paragraph (c)(2)(i)(A)(1) of this section, the shareholder must take into account the value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291-1T(b)(8), except for PFIC stock that is—

(A) Owned through another United States person that itself is a shareholder of the PFIC (including a domestic partnership or S corporation treated as a shareholder of a PFIC for purposes of information reporting requirements applicable to a shareholder); or

(B) Owned through a PFIC under section 1298(a)(2)(B) and § 1.1291-1T(b)(8)(ii)(B).

(iii) *Application of the \$25,000 exception to shareholders who file a joint return.* In the case of a joint return, the exception described in paragraph (c)(2)(i)(A)(1) of this section shall apply if the value of all PFIC stock owned directly or indirectly (as determined under section 1298(a), § 1.1291-1T(b)(8), and paragraph (c)(2)(ii) of this section) by both spouses is \$50,000 or less, and all of the other applicable requirements of paragraph (c)(2) are met.

(iv) *Reliance on periodic account statements.* A shareholder may rely upon periodic account statements provided at least annually to determine the value of a PFIC unless the shareholder has actual knowledge or reason to know based on readily accessible information that the statements do not reflect a reasonable estimate of the PFIC's value.

(3) *Exception for taxable years ending before December 31, 2013.* A United States person is not required under section 1298(f) and these regulations to file an annual report with respect to a PFIC for a taxable year of the United States person ending before December 31, 2013.

(d) *Time and manner for filing.* A United States person required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC must attach the form to its Federal income tax return (or, if applicable, partnership or exempt organization return) for the taxable year to which the filing obligation relates on or before the

due date (including extensions) for the filing of the return. In the case of any failure to report information that is required to be reported pursuant to section 1298(f) and these regulations, the time for assessment of tax will be extended pursuant to section 6501(c)(8).

(e) *Separate annual report for each PFIC*—(1) *General rule.* If a United States person is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to more than one PFIC, the United States person must file a separate Form 8621 (or successor form) for each PFIC.

(2) *Special rule for shareholders who file a joint return.* United States persons that file a joint return may file a single Form 8621 (or successor form) with respect to a PFIC in which they jointly or individually own an interest.

(f) *Coordination rule.* A United States person that is a shareholder of a PFIC may file a single Form 8621 (or successor form) with respect to the PFIC that contains all of the information required to be reported pursuant to section 1298(f) and these regulations and any other information reporting requirements or election rules.

(g) *Examples.* The following examples illustrate the rules of this section:

*Example 1. General requirement to file.* (i) *Facts.* In 2013, J, a United States citizen, directly owns an interest in Partnership X, a domestic partnership, which, in turn, owns an interest in A Corp, which is a PFIC. In addition, J directly owns an interest in Partnership Y, a foreign partnership, which, in turn, owns an interest in A Corp. Neither J nor Partnership X has made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is \$200,000, and the value of J's proportionate share of Partnership Y's interest in A Corp is \$100,000. During 2013, J is not treated as receiving an excess distribution or recognizing gain treated as an excess distribution with respect to A Corp. Partnership X timely files a Form 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp for 2013.

(ii) *Results.* J is the first United States person in the chain of ownership with respect to J's interest in A Corp held through Partnership Y. Under paragraph (b)(1) of this section, J must file a Form 8621 under section 1298(f) with respect to J's interest in A Corp held through Partnership Y because J is an indirect shareholder of A Corp under § 1.1291-1T(b)(8) that holds PFIC stock through a foreign entity (Partnership Y), and there are no other United States persons in the chain of ownership. The fact that Partnership X filed a Form 8621 with respect to A Corp does not

relieve J of the obligation under paragraph (b)(1) of this section to file a Form 8621 with respect to J's interest in A Corp held through Partnership Y.

*Example 2. Application of the \$25,000 exception.*

(i) *Facts.* In 2013, J, a United States citizen, directly owns stock of A Corp, B Corp, and C Corp, all of which were PFICs during 2013. As of the last day of 2013, the value of J's interests was \$5,000 in A Corp, \$10,000 in B Corp, and \$4,000 in C Corp. J timely filed an election under section 1295 to treat A Corp as a qualified electing fund for the first year in which A Corp qualified as a PFIC, and a mark-to-market election under section 1296 with respect to the stock of B Corp. J did not make a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to C Corp. J did not receive an excess distribution or recognize gain treated as an excess distribution in respect of C Corp during 2013.

(ii) *Results.* Under paragraph (b)(1) of this section, J must file separate Forms 8621 with respect to A Corp and B Corp for 2013. However, J is not required to file a Form 8621 with respect to C Corp because J owns, in the aggregate, PFIC stock with a value of less than \$25,000 on the last day of J's taxable year, C Corp is not subject to a qualified electing fund election or mark to market election with respect to J, and J did not receive an excess distribution in respect of C Corp or recognize gain treated as an excess distribution in respect of C Corp during 2013. Therefore, J qualifies for the \$25,000 exception in paragraph (c)(2) of this section with respect to C Corp.

*Example 3. Application of the \$25,000 exception to indirect shareholder.*

(i) *Facts.* E, a United States citizen, directly owns an interest in Partnership X, a domestic partnership. Partnership X, in turn, directly owns an interest in A Corp and B Corp, both of which are PFICs. Partnership X timely filed an election under section 1295 to treat B Corp as a qualified electing fund for the first year in which B Corp qualified as a PFIC. In addition, E directly owns an interest in C Corp, which is a PFIC. C Corp, in turn, owns an interest in D Corp, which is a PFIC. E has not made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp, C Corp, or D Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is \$30,000, the value of Partnership X's interest in B Corp is \$30,000, the value of E's indirect interest in A Corp is \$10,000, the value of E's indirect interest in B Corp is \$10,000, the value of E's interest in C Corp is \$20,000, and the value of C Corp's interest in D Corp is \$10,000. During 2013, E did not receive an excess distribution, or recognize gain treated as an excess distribution, with respect to A Corp, C Corp, or D Corp. Partnership X timely files Forms 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp and B Corp for 2013.

(ii) *Results.* Under paragraph (b) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp because E is not the United States person that is at the lowest tier in the chain of ownership with respect to A Corp and E did not receive an excess distribution or recognize gain treated as an excess distribution with respect to A Corp. Furthermore, under paragraph

(b)(2)(ii) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to B Corp because Partnership X timely filed a Form 8621 with respect to B Corp. In addition, under paragraph (c)(2)(ii)(A) of this section, E does not take into account the value of A Corp and B Corp, which E owns through Partnership X, in determining whether E qualifies for the \$25,000 exception. Further, under paragraph (c)(2)(ii)(B) of this section, E does not take into account the value of D Corp in determining whether E qualifies for the \$25,000 exception. Therefore, even though E is the United States person that is at the lowest tier in the chain of ownership with respect to C Corp and D Corp, E does not have to file a Form 8621 with respect to C Corp or D Corp because E qualifies for the \$25,000 exception set forth in paragraph (c)(2)(i)(A)(I) of this section.

*Example 4. Indirect shareholder's requirement to file.*

(i) *Facts.* The facts are the same as in *Example 3*, except that the value of E's interest in C Corp is \$30,000 and the value of E's proportionate share of C Corp's interest in D Corp is \$3,000.

(ii) *Results.* The results are the same as in *Example 3* with respect to the requirement to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp and B Corp. However, under the facts in this *Example 4*, E does not qualify for the \$25,000 exception under paragraph (c)(2)(i)(A)(I) of this section because the value of E's interest in C Corp is \$30,000. Accordingly, E must file a Form 8621 under section 1298(f) and these regulations with respect to C Corp. However, E does qualify for the \$5,000 exception under paragraph (c)(2)(i)(A)(2) of this section with respect to D Corp, and thus does not have to file a Form 8621 with respect to D Corp.

(h) *Effective/applicability date.* Except as provided in paragraph (c)(3) of this section, this section applies to taxable years of shareholders ending on or after December 31, 2013. Paragraph (c)(3) of this section applies to taxable years of shareholders ending before December 31, 2013.

(i) *Expiration date.* This section expires on December 30, 2016.

Par. 8. Section 1.6038-2 is amended by revising paragraph (j)(3) to read as follows:

*§ 1.6038-2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.*

\* \* \* \* \*

(j) \* \* \*

(3) [Reserved]. For further guidance, see § 1.6038-2T(j)(3).

\* \* \* \* \*

Par. 9. Section 1.6038-2T is added to read as follows:

*§ 1.6038-2T Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations (temporary).*

(a) though (j)(2). [Reserved]. For further guidance, see § 1.6038(a) through (j)(2).

(3) *Statement required.* Any United States person required to furnish information under this section with his return who does not do so by reason of the provisions of paragraph (j)(1) of this section shall file a statement with his income tax return indicating that such liability has been (or will be) satisfied and identifying the return with which the information was or will be filed and the place of filing.

(k) through (l) [Reserved]. For further guidance, see § 1.6038(k) through (l).

(m) *Effective/applicability date.* Except as otherwise provided, this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006. Paragraphs (k)(1) and (k)(5) *Examples 3 and 4* of this section apply June 21, 2006. Paragraph (d) of this section applies to taxable years ending after April 9, 2008. Paragraph (j)(3) of this section applies to returns filed on or after December 31, 2013.

(n) *Expiration date.* Paragraph (j)(3) of this section expires on or before December 30, 2016.

Par. 10. Section 1.6046-1 is amended by:

1. Paragraphs (a)(1) is amended by removing the language "Form 959" and adding "Form 5471 (or subsequent form)" in its place.
2. Paragraph (f)(1) is amended by removing the language "5" and adding "10" in its place.
3. Revising paragraph (a)(2)(i).
4. Revising *Examples 2 through 4* of paragraph (a)(3).
5. Revising paragraph (c).
6. Revising paragraph (e)(5).
7. Revising paragraph (f)(4).
8. Redesignating paragraph (l) as paragraph (l)(1).
9. Adding paragraph (l)(2).

The additions and revisions read as follows:

§ 1.6046-1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

(a) \* \* \*

(2) \* \* \* (i) Requirement of return.

Each United States citizen or resident who is at any time after January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 5471 setting forth the information described in paragraph (a)(2)(ii) of this section with respect to each United States person who, during the time such citizen or resident is such an officer or director —

(a) Acquires (whether in one or more transactions) outstanding stock of such corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 10 percent or more in value of such stock) has, a value equal to 10 percent or more in value of the outstanding stock of such foreign corporation;

(b) Acquires (whether in one or more transactions) an additional 10 percent or more in value of the outstanding stock of such foreign corporation; or

(c) Is not described in paragraph (a)(2)(i)(a) or (b) of this section, and who, at any time after January 1, 1987, is treated as a United States shareholder under section 953(c) with respect to such foreign corporation.

\* \* \* \* \*

(3) \* \* \*

*Example 2. (i) Facts. A, a United States citizen, is, on January 1, 2014, a director of M, a foreign corporation. X, on January 1, 2014, is a United States person owning 4% in value of the outstanding stock of M Corporation. On July 1, 2014, X acquires 4% in value of the outstanding stock of M Corporation and on September 1, 2014, he acquires an additional 4% in value of such stock.*

*(ii) Results. The July 1, 2014, transaction does not give rise to liability to file a return; however, A must file a return as a result of the September 1, 2014, transaction because X's holdings now exceed 10%.*

*Example 3. (i) Facts. The facts are the same as in Example 2 and, on September 15, 2014, X acquires an additional 8% in value of the outstanding stock of M Corporation. (X's total holdings are now 20%.) On November 1, 2014, X acquires an additional 4% in value of the outstanding stock of M Corporation.*

*(ii) Results. The September 15, 2014, transaction does not give rise to liability to file a return since X has not acquired 10% in value of the outstanding stock of M Corporation since A last became liable to*

*file a return. However, A must file a return as a result of the November 1, 2014, transaction because X has now acquired an additional 10% in value of the outstanding stock of M Corporation.*

*Example 4. (i) Facts. The facts are the same as in Examples 2 and 3 and, in addition, B, a United States citizen, becomes an officer of M Corporation on September 10, 2014.*

*(ii) Results. B is not required to file a return either as a result of the facts set forth in Example 2 or as a result of the September 15, 2014, transaction described in Example 3. However, B is required to file a return as a result of the November 1, 2014, transaction described in Example 3 because X has acquired an additional 10% in value of the outstanding stock of M Corporation while B is an officer or director.*

\* \* \* \* \*

(c) Returns required of U.S. persons when liability to file arises after January 1, 1963—(1) U.S. persons required to file. A return on Form 5471, containing the information required by paragraph (c)(4) of this section, shall be made by each U.S. person when at any time after January 1, 1963:

(i) Such person acquires (whether in one or more transactions) outstanding stock of such foreign corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 10 percent or more in value of such stock) has, a value equal to 10 percent or more in value of the outstanding stock of such foreign corporation;

(ii) Such person, having already acquired the interest referred to in paragraph (b) of this section or in paragraph (c)(1)(i) of this section—

(a) Acquires (whether in one or more transactions) an additional 10 percent or more in value of the outstanding stock of such foreign corporation;

(b) Owns 10 percent or more in value of the outstanding stock of such foreign corporation when such foreign corporation is reorganized (as defined in paragraph (f)); or

(c) Disposes of sufficient stock in such foreign corporation to reduce his interest to less than 10 percent in value of the outstanding stock of such foreign corporation; or

(iii) Such person is, at any time after January 1, 1987, treated as a United States shareholder under section 953(c) with respect to a foreign corporation.

(2) Examples. The provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

*Example 1. (i) Facts. On January 15, 2014, A, a United States person, acquires 10% in value of the outstanding stock of M, a foreign corporation.*

*(ii) Results. A must file a return under the provisions of paragraph (c)(1) of this section.*

*Example 2. (i) Facts. On January 1, 2014, B, a United States person, owns 4% in value of the outstanding stock of M, a foreign corporation. On February 1, 2015, B acquires an additional 6% in value of the outstanding stock of M Corporation.*

*(ii) Results. B is not required to file a return for 2014 under the provisions of this section because he does not own 10% or more in value of the outstanding stock of M Corporation. B must file a return for 2015 under the provisions of paragraph (c)(1) of this section.*

*Example 3. (i) Facts. On January 1, 2014, C, a United States person, owns 12% in value of the outstanding stock of M, a foreign corporation. On February 1, 2014, C acquires an additional 4% in value of the outstanding stock of M Corporation in a transaction not involving a reorganization.*

*(ii) Results. C is not required to file a return under the provisions of paragraph (c)(1) of this section with respect to the acquisition of the additional 4% of M Corporation.*

*Example 4. (i) Facts. The facts are the same as in Example 3 except that, in addition, on April 1, 2014, C acquires 4% in value of the outstanding stock of M Corporation in a transaction not involving a reorganization. (C's total holdings are now 20%.) On May 1, 2014, C acquires 2% in value of the outstanding stock of M Corporation.*

*(ii) Results. C is not required to file a return under the provisions of paragraph (c)(1) of this section as a result of the April 1, 2014, acquisition because he has not acquired 10% or more in value of the outstanding stock of M Corporation since he last became liable to file a return. C must file a return under the provisions of paragraph (c)(1) of this section as a result of the May 1, 2014, acquisition because C acquired 10% of the outstanding stock of M Corporation during 2014.*

*Example 5. (i) Facts. On June 1, 2014, D, a United States person, owns 24% in value of the outstanding stock of M, a foreign corporation. Also, on June 1, 2014, M Corporation is reorganized and, as a result of such reorganization, D owns only 12% of the outstanding stock of such foreign corporation.*

*(ii) Results. D must file a return under the provisions of paragraph (c)(1) of this section.*

*Example 6. (i) Facts. The facts are the same as in Example 5 except that, in addition, on November 1, 2015, D donates 4% of the outstanding stock of M Corporation to a charity.*

*(ii) Results. Since D has disposed of sufficient stock to reduce his interest in M Corporation to less than 10% in value of the outstanding stock of such corporation, D must file a return under the provisions of paragraph (c)(1) of this section.*

(3) Shareholders who become U.S. persons. A return on Form 5471, containing the information required by paragraph (c)(4) of this section, shall be made by

each person who at any time after January 1, 1963, becomes a U.S. person while owning 10 percent or more in value of the outstanding stock of such foreign corporation.

(4) *Information required to be shown on return*—(i) *In general.* The return on Form 5471, required to be filed by persons described in paragraph (c)(1) or (3) of this section, shall set forth the same information as is required by the provisions of paragraph (b) of this section except that where such provisions require information with respect to January 1, 1963, such information shall be furnished with respect to the date on which liability arises to file the return required under this paragraph.

(ii) *Additional information.* In addition to the information required under paragraph (c)(4)(i) of this section, the following information shall also be furnished in the return required under this paragraph:

(a) The date on or after January 1, 1963, if any, on which such shareholder (or shareholders) last filed a return under this section with respect to the corporation;

(b) If a return is filed by reason of becoming a United States person, the date the shareholder became a United States person;

(c) If a return is filed by reason of the disposition of stock, the date and method of such disposition and the person to whom such disposition was made; and

(d) If a return is filed by reason of the organization or reorganization of the foreign corporation on or after January 1, 1963, the following information with respect to such organization or reorganization:

(1) A statement showing a detailed list of the classes and kinds of assets transferred to the foreign corporation including a description of the assets (such as a list of patents, copyrights, stock, securities, etc.), the fair market value of each asset transferred (and, if such asset is transferred by a United States person, its adjusted basis), the date of transfer, the name, address, and identifying number, if any, of the owner

immediately prior to the transfer, and the consideration paid by the foreign corporation for such transfer;

(2) A statement showing the assets transferred and the notes or securities issued by the foreign corporation, the name, address, and identifying number, if any, of each person to whom such transfer or issue was made, and the consideration paid to the foreign corporation for such transfer or issue; and

(3) An analysis of the changes in the corporation's surplus accounts occurring on or after January 1, 1963.

(iii) *Exclusion of information previously furnished.* In any case where any identical item of information required to be filed under this paragraph by a shareholder with respect to a foreign corporation has previously been furnished by such shareholder in any return made in accordance with the provisions of this section, such shareholder may satisfy the requirements of this paragraph by filing Form 5471, identifying such item of information, the date furnished, and stating that it is unchanged.

\* \* \* \* \*

(e) \* \* \*

(5) [Reserved]. For further guidance see § 1.6046-1T(e)(5).

\* \* \* \* \*

(f) \* \* \*

(4) [Reserved].

\* \* \* \* \*

(1) *Effective/applicability date*—(1) \* \* \*

(2) Paragraph (c)(1)(iii) of this section applies to taxable years ending after December 31, 2013.

Par. 11. Section 1.6046-1T is added to read as follows:

*§ 1.6046-1T Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock (temporary).*

(a)(1) through (e)(4). [Reserved]. For further guidance, see § 1.6046-1(a)(1) through (e)(4).

(5) *Persons excepted from furnishing items of information.* Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of value of such stock) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 5471 indicating that such liability has been satisfied and identifying the return in which such item of information was included. This paragraph (e)(5) does not apply to persons excepted from filing a return by reason of the provisions of paragraph (e)(4) of this section.

(f) (1) through (l)(2). [Reserved]. For further guidance, see § 1.6046-1(f)(1) through (l)(2).

(3) Paragraph (e)(5) of this section applies to returns filed on or after December 31, 2013. See paragraph (e)(5) of § 1.6046-1, as contained in 26 CFR part 1 revised as of April 1, 2012, for returns filed before December 31, 2013. 126.

(m) *Expiration date.* Paragraph (e)(5) of this section expires on or before December 30, 2016.

John Dalrymple,  
*Deputy Commissioner for Services and Enforcement.*

Approved December 12, 2013

Mark J. Mazur,  
*Assistant Secretary of the Treasury (Tax Policy).*

(Filed in the Office of the Federal Register on December 30, 2013, 8:45 a.m., and published in the issue of the Federal Register for December 31, 2013, 78 F.R. 79602)

## Part III. Administrative, Procedural, and Miscellaneous

### Reliance on Proposed Regulations for Tax-exempt Hospitals

#### Notice 2014-2

##### SECTION 1. PURPOSE

This notice confirms that tax-exempt hospital organizations can rely on proposed regulations under § 501(r) contained in notices of proposed rulemaking published on June 26, 2012, and April 5, 2013, pending the publication of final regulations or other applicable guidance.

##### SECTION 2. BACKGROUND

Section 9007 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), added §§ 501(r) and 4959 to the Internal Revenue Code and amended § 6033(b) of the Code. These provisions affect organizations that operate one or more hospital facilities and that are exempt or are seeking exemption from federal income tax because they are described in § 501(c)(3) of the Code (“hospital organizations”). Section 501(r)(1) provides that a hospital organization will not be treated as described in § 501(c)(3) unless the organization meets the requirements of § 501(r)(3) through (r)(6).

The statutory requirements of § 501(r) (except for § 501(r)(3)) are effective for a hospital organization’s first taxable year beginning after March 23, 2010. The effective date for § 501(r)(3) is a hospital organization’s first taxable year beginning after March 23, 2012.

On June 26, 2012, the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) published a notice of proposed rulemaking in the Federal Register (REG-130266-11, 2012-32 I.R.B. 126, [77 FR 38148]) (“2012 proposed regulations”) that contains proposed regulations regarding the requirements of § 501(r)(4), (r)(5), and (r)(6). In addition, § 1.501(r)-1 of the 2012 proposed regulations contains definitions of “hospital organization,” “hospital facility,” and other key terms used in the regulations. The preamble of the 2012

proposed regulations provides that taxpayers may rely on the 2012 proposed regulations until final or temporary regulations are issued.

On April 5, 2013, the Treasury Department and the IRS published a notice of proposed rulemaking in the Federal Register (REG-106499-12, 2013-21 I.R.B. 1111, [78 FR 20523]) (“2013 proposed regulations”) that contains proposed regulations regarding the community health needs assessment (CHNA) requirements of § 501(r)(3) and the related reporting obligations under § 6033 and excise tax under § 4959. In addition, the 2013 proposed regulations provide guidance on the consequences for failing to meet any of the § 501(r) requirements. The 2013 proposed regulations also make minor amendments to the definitions of “hospital facility” and “hospital organization” contained in the 2012 proposed regulations and note that the definitions and concepts contained in the 2012 proposed regulations generally apply for purposes of the 2013 proposed regulations. The 2013 proposed regulations provide that a hospital facility may rely on § 1.501(r)-3 of the 2013 proposed regulations for any CHNA conducted or implementation strategy adopted on or before the date that is six months after the date those proposed regulations are published as final or temporary regulations in the Federal Register.

A hospital organization must comply with the statutory requirements of § 501(r), which are already in effect. The 2012 and 2013 proposed regulations and other interim guidance represent, in the view of the Treasury Department and the IRS, a reasonable interpretation of the statute. However, hospital organizations will not be required to comply with the 2012 and 2013 proposed regulations until such regulations are published as final or temporary regulations.

##### SECTION 3. RELIANCE

Because the preamble to the 2013 proposed regulations did not expressly mention whether taxpayers could rely on sections other than § 1.501(r)-3 pending the publication of final or temporary regulations, some commenters have asked

whether they can rely currently on the other sections of the 2013 proposed regulations. The Treasury Department and the IRS confirm that tax-exempt organizations may rely on all of the provisions of both the 2012 and 2013 proposed regulations pending the publication of final or temporary regulations or other applicable guidance. In addition, organizations may rely on § 1.501(r)-3 of the 2013 proposed regulations for any CHNA conducted or implementation strategy adopted on or before the date that is six months after final or temporary regulations are published.

The 2013 proposed regulations make minor amendments to the definitions of “hospital facility” and “hospital organization” contained in the 2012 proposed regulations. Tax-exempt hospital organizations may rely on either the definitions in the 2012 proposed regulations or the amended definitions in the 2013 proposed regulations until final or temporary regulations or other applicable guidance are published. Thus, for example, in accordance with the definition of “hospital facility” in § 1.501(r)-1(b)(15) of the 2012 proposed regulations, a hospital organization may, but is not required to, treat multiple buildings operated under a single state license as a single hospital facility. In addition, organizations may rely on the definition of what it means to be “operating a hospital facility” in § 1.501(r)-1(c)(2) of the 2013 proposed regulations – including the exceptions provided in § 1.501(r)-1(c)(2)(i) and (ii) for certain tax-exempt organizations that are partners in partnerships that operate hospital facilities – to determine whether an organization “operates” a hospital facility and is, therefore, subject to the requirements of § 501(r). Organizations may rely on the two exceptions provided in § 1.501(r)-1(c)(2)(i) and (ii) of the 2013 proposed regulations for purposes of the 2013 Form 990, *Return of Organization Exempt from Income Tax*, and Schedule H, *Hospitals*, of the Form 990, notwithstanding the fact that the instructions to the 2013 Form 990 and Schedule H do not mention these exceptions.

## SECTION 4. DRAFTING INFORMATION

The principal authors of this notice are Garrett Gluth of the Tax Exempt and Government Entities Division of the IRS and Amber Mackenzie of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in developing this notice. For further information regarding this notice, contact Mr. Gluth at (202) 317-8413 or Ms. Mackenzie at (202) 317-5800 (not toll-free numbers).

## Proposed Procedures for Charitable Hospitals to Correct and Disclose Failures to Meet § 501(r)

### Notice 2014-3

#### PURPOSE AND BACKGROUND

This notice contains a proposed revenue procedure that provides correction and disclosure procedures under which certain failures to meet the requirements of § 501(r) of the Internal Revenue Code will be excused for purposes of § 501(r)(1) and 501(r)(2)(B).

Section 9007 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), enacted § 501(r), which imposes additional requirements on charitable hospital organizations. Section 501(r)(1) provides that a hospital organization will not be treated as described in § 501(c)(3) unless the organization meets the requirements of § 501(r)(3) through (r)(6). Similarly, § 501(r)(2)(B)(ii) provides that a hospital organization operating more than one hospital facility will not be treated as described in § 501(c)(3) with respect to any such hospital facility for which the requirements of § 501(r) are not separately met.

On June 26, 2012, the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) published a notice of proposed rulemaking in the Federal Register (REG-130266-11, 2012-32 I.R.B. 126 [77 FR

38148]) (“2012 proposed regulations”) that contains proposed regulations regarding the requirements of § 501(r)(4), (r)(5), and (r)(6). On April 5, 2013, the Treasury Department and the IRS published a notice of proposed rulemaking in the Federal Register (REG-106499-12, 2013-21 I.R.B. 1111 [78 FR 20523]) (“2013 proposed regulations”) that contains proposed regulations regarding the requirements of § 501(r)(3) and the consequences for failing to meet any of the § 501(r) requirements.

To provide an incentive for hospital organizations to take steps not only to avoid failures but to remedy and disclose them when they occur, the 2013 proposed regulations specify that, for purposes of § 501(r)(1) and 501(r)(2)(B), a hospital organization’s failure to meet one or more of the requirements described in § 501(r) and § 1.501(r)-3 through § 1.501(r)-6 that is neither willful nor egregious will be excused if the hospital organization corrects the failure and makes disclosure in accordance with the rules set forth in additional guidance to be issued by the Treasury Department and the IRS.

This notice provides a proposed revenue procedure that if adopted would contain that additional guidance.

#### REQUEST FOR COMMENTS

The Treasury Department and the IRS invite comments regarding the procedures set forth in the proposed revenue procedure, including what additional examples, if any, would be helpful to include and whether hospitals should be required to make disclosure in ways other than reporting on Schedule H, *Hospitals*, of its Form 990, *Return of Organization Exempt From Income Tax*, such as on their Web sites.

Comments should refer to Notice 2014-3 and be submitted by March 14, 2014, to:

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2014-3)  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

CC:PA:LPD:PR (Notice 2014-3)  
Courier’s Desk  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Alternatively, comments may be submitted electronically via e-mail to the following address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include “Notice 2014-3” in the subject line.

All comments submitted by the public will be available for public inspection and copying.

#### DRAFTING INFORMATION

The principal author of this notice is Garrett Gluth of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Garrett Gluth at 202-317-8413 (not a toll-free number).

#### PROPOSED REVENUE PROCEDURE

##### SECTION 1. PURPOSE

This revenue procedure provides guidance regarding correction and disclosure procedures for hospital organizations to follow so that certain failures to meet the requirements of § 501(r) of the Internal Revenue Code will be excused for purposes of § 501(r)(1) and 501(r)(2)(B).

##### SECTION 2. BACKGROUND

Section 9007 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), enacted § 501(r), which imposes additional requirements on charitable hospital organizations. Section 501(r)(1) provides that a hospital organization described in § 501(r)(2) will not be treated as described in § 501(c)(3) unless the organization meets the requirements of § 501(r)(3) through (r)(6).

Section 501(r)(2)(A) defines a hospital organization as including any organization that operates a facility required by a state to be licensed, registered, or similarly recognized as a hospital.

Section 501(r)(2)(B) requires a hospital organization that operates more than one hospital facility to meet the requirements of § 501(r) separately with respect to each hospital facility and provides that

such a hospital organization will not be treated as described in § 501(c)(3) with respect to any hospital facility for which the requirements of § 501(r) are not separately met.

Section 501(r)(3) requires a hospital organization to conduct a community health needs assessment (CHNA) every three years and adopt an implementation strategy to meet the community health needs identified through such assessment. Section 4959 imposes a \$50,000 excise tax on a hospital organization that fails to meet the CHNA requirements of § 501(r)(3).

Section 501(r)(4) requires a hospital organization to establish a financial assistance policy (FAP) and a policy relating to emergency medical care.

Section 501(r)(5) requires a hospital organization to limit amounts charged for emergency or other medically necessary care that is provided to individuals eligible for assistance under the organization's FAP (FAP-eligible individuals) to not more than the amounts generally billed to individuals who have insurance covering such care. Section 501(r)(5) also prohibits the use of gross charges.

Section 501(r)(6) requires a hospital organization to make reasonable efforts to determine whether an individual is FAP-eligible before engaging in extraordinary collection actions (ECAs) against the individual.

The statutory requirements of § 501(r) (except for § 501(r)(3)) are effective for a hospital organization's first taxable year beginning after March 23, 2010. Section 501(r)(3) is effective for a hospital organization's first taxable year beginning after March 23, 2012.

On June 26, 2012, the Department of the Treasury ("Treasury Department") and the Internal Revenue Service ("IRS") published a notice of proposed rulemaking in the Federal Register (REG-130266-11, 2012-32 I.R.B. 126 [77 FR 38148]) ("2012 proposed regulations") that contains proposed regulations regarding the requirements of § 501(r)(4), (r)(5), and (r)(6). On April 5, 2013, the Treasury Department and the IRS pub-

lished a notice of proposed rulemaking in the Federal Register (REG-106499-12, 2013-21 I.R.B. 1111 [78 FR 20523]) ("2013 proposed regulations") that contains proposed regulations regarding the CHNA requirements of § 501(r)(3) and the consequences for failing to meet any of the § 501(r) requirements.

Under § 1.501(r)-2(c) of the 2013 proposed regulations, a hospital facility's failure to meet the requirements of § 501(r) and § 1.501(r)-3 through § 1.501(r)-6 of the regulations that is neither willful nor egregious shall be excused for purposes of § 501(r)(1) and 501(r)(2)(B) if the hospital facility corrects and makes disclosure of the failure in accordance with a revenue procedure, notice, or other guidance to be published in the Internal Revenue Bulletin.

Under § 1.501(r)-2(b) of the 2013 proposed regulations, a hospital facility's omission of required information from a report or policy described in § 1.501(r)-3 or § 1.501(r)-4, or error with respect to the implementation or operational requirements described in § 1.501(r)-3 through § 1.501(r)-6, will not be considered a failure to meet a requirement of § 501(r) if (1) such omission or error was minor, inadvertent, and due to reasonable cause; and (2) the hospital facility corrects such omission or error as promptly after discovery as is reasonable given the nature of the omission or error. Because minor and inadvertent omissions and errors due to reasonable cause that are corrected in accordance with the requirements of § 1.501(r)-2(b) of the 2013 proposed regulations are not considered failures to meet a requirement of § 501(r), hospitals do not need to use the correction and disclosure procedures described in this revenue procedure for such omissions and errors. However, an organization that wants to correct a minor and inadvertent omission or error may rely on the principles regarding correction described in section 5 of this revenue procedure in meeting the correction requirements of § 1.501(r)-2(b)(2).<sup>1</sup>

### SECTION 3. EFFECT

.01 *In general.* The IRS will not treat a hospital organization's failure to meet a requirement of § 501(r) as a failure for purposes of § 501(r)(1) and 501(r)(2)(B) if the failure falls within the scope of section 4 and the hospital organization corrects the failure in accordance with section 5 and discloses the failure in accordance with section 6.

.02 *Excise tax under § 4959.* Notwithstanding the treatment of a failure to meet a requirement of § 501(r) as not a failure under section 3.01 for purposes of § 501(r)(1) and 501(r)(2)(B), a hospital organization may be subject to excise tax under § 4959 for failures to meet the requirements of § 501(r)(3).

### SECTION 4. SCOPE

.01 *In general.* A hospital organization may rely upon this revenue procedure to correct and disclose any failure to meet a requirement of § 501(r) that is not willful or egregious, provided that the hospital organization has begun correcting the failure in accordance with section 5 and that it has disclosed the failure in accordance with section 6 before the hospital organization is first contacted by the IRS concerning an examination of the organization. If the annual return for the tax year in which the failure is discovered is not yet due (with extensions), then the hospital organization need only to have begun correcting the failure in accordance with section 5 before the hospital organization is first contacted by the IRS concerning an examination.

.02 *Willful or egregious.* A failure that is willful includes a failure due to gross negligence, reckless disregard, or willful neglect. A hospital organization's correction and disclosure of a failure does not create a presumption that the failure was not willful or egregious. However, the fact that correction and disclosure in accordance with this revenue procedure were made will be considered as a factor and

<sup>1</sup>In addition, § 1.501(r)-2(a)(8) of the 2013 proposed regulations provides that, for purposes of determining whether to continue to recognize the § 501(c)(3) status of a hospital organization, the IRS will consider whether a hospital organization corrected a failure as promptly after discovery as was reasonable given the nature of the failure. A hospital organization that cannot or does not have an error or omission excused by following the correction and disclosure procedures outlined in this revenue procedure may nevertheless use these principles in demonstrating that they satisfy the factor described in § 1.501(r)-2(a)(8).

may tend to indicate that an error or omission may not have been willful or egregious.

## SECTION 5. CORRECTION

.01 *Correction principles.* Correction must be made in accordance with the following principles:

(1) *Restoration of affected persons.* To the extent reasonably feasible, the correction should be made with respect to each affected person, if any, and should restore the affected person(s) to the position they would have been in had the failure not occurred, regardless of whether the harm suffered by the affected person(s) occurred in a prior year and regardless of whether such prior year is a closed taxable year.

(2) *Reasonable and appropriate correction.* The correction should be reasonable and appropriate for the failure. Depending on the nature of the failure, there may be more than one reasonable and appropriate correction.

(3) *Timing.* The correction should be made as promptly after discovery as is reasonable given the nature of the failure.

(4) *Implementation/modification of safeguards.* If the hospital organization has not established practices and procedures (whether informal or formal) for its hospital facility or facilities that are reasonably designed to achieve each facility's compliance with the requirements of § 501(r), the hospital organization should establish such practices and procedures as part of its correction. If the hospital organization has established practices and procedures for its hospital facility or facilities to achieve compliance with § 501(r) but those practices and procedures failed to anticipate the particular type of failure that occurred, the hospital organization should determine if changes to its practices and procedures are needed to reduce the likelihood of that type of failure recurring and to assure prompt identification and correction of any such failures that do occur. If it identifies any such changes to its practices and procedures, it should implement those changes.

.02 *Examples.* The provisions of section 5.01 may be illustrated by the following examples. For purposes of these examples, assume that the hospital facility corrected the failure with respect to all

affected persons as promptly after discovery as is reasonable given the nature of the failure and put into place revised or newly established practices and procedures to minimize the likelihood of the failure recurring.

(1) A hospital facility that has failed to adopt a CHNA report that contains all of the elements required by § 1.501(r)-3 may correct the failure by preparing and adopting a CHNA report containing all of the required elements and making the corrected CHNA report widely available on a Web site within the meaning of § 1.501(r)-1(c)(4) of the 2013 proposed regulations.

(2) A hospital facility that has failed to adopt a FAP that contains all of the elements required by § 1.501(r)-4 may correct the failure by establishing a FAP containing all of the required elements, including making the corrected FAP widely available on a Web site within the meaning of § 1.501(r)-1(c)(4) of the 2013 proposed regulations.

(3) A hospital facility has failed to meet the requirements of § 1.501(r)-5 because, due to processing errors, it charged FAP-eligible individuals more than an amount permitted under that section. The errors were discovered during the month-end accounting period closing. The hospital facility may correct the failure by providing all of the affected FAP-eligible individuals with an explanation of the error, a corrected billing statement, and a refund of any payments the individuals made to the hospital facility (or any third party) in excess of the amount they are determined to owe as FAP-eligible individuals.

(4) If a hospital facility fails to properly implement a policy required under § 1.501(r)-4 and that failure does not involve overcharging a FAP-eligible individual or engaging in an ECA (for example, a failure to widely publicize a FAP in the manner described in the FAP), the hospital facility may correct the failure by beginning to implement the policy correctly and taking reasonable actions to compensate for the failure (such as doing additional outreach or advertising of the FAP in local media in the case of a failure to widely publicize the FAP).

## SECTION 6. DISCLOSURE

A failure is disclosed for purposes of this revenue procedure if the hospital organization reports the following information on Schedule H, *Hospitals*, of its Form 990, *Return of Organization Exempt From Income Tax*, for the tax year in which the failure is discovered:

(1) *A description of the failure*, including the type of failure, the hospital facility or facilities where the failure occurred, the date(s) of the failure, the number of occurrences, and, in the case of failures to meet the operational requirements in § 1.501(r)-5 or § 1.501(r)-6, the number of persons affected and the dollar amounts involved. In addition, a hospital organization must describe the cause of the failure and the practices and procedures (if any) that were in place prior to the occurrence of the failure to detect or prevent the type of failure that occurred.

(2) *A description of the discovery*, including how it was made and the timing of discovery.

(3) *A description of the correction made*, including the method of correction, the date of correction, and whether all persons were restored to the position they would have been in had the failure not occurred and, if not, the reasons why.

(4) *A description of the practices and procedures*, if any, that were revised or newly established by the hospital organization for its hospital facility or facilities to minimize the likelihood of the type of failure recurring and to promptly identify and correct any such future failures that do occur; or, if no practices and procedures were revised or newly established by the hospital organization, an explanation of why no changes in practices and procedures were needed.

## SECTION 7. EFFECTIVE DATE

This revenue procedure is effective on and after [INSERT DATE OF PUBLICATION OF THE FINAL REVENUE PROCEDURE IN THE INTERNAL REVENUE BULLETIN].

## SECTION 8. DRAFTING INFORMATION

The principal author of this Revenue Procedure is Garrett Gluth of the Exempt Organizations, Tax Exempt and Government Entities Division. For further infor-

mation regarding this revenue procedure, contact Garrett Gluth at 202-317-8413 (not a toll-free number).

26 CFR 1.6033-2. Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

## Rev. Proc. 2014-11

### SECTION 1. PURPOSE

.01 This revenue procedure provides procedures for reinstating the tax-exempt status of organizations that have had their tax-exempt status automatically revoked under section 6033(j)(1) of the Internal Revenue Code (“Code”) for failure to file required Annual Returns or notices for three consecutive years.

.02 *Streamlined Retroactive Reinstatement Process.* An organization that was eligible to file either Form 990-EZ, *Short Form Return Of Organization Exempt from Income Tax*, or Form 990-N, *e-Postcard*, for each of the three consecutive years that it failed to file and that has not previously had its tax-exempt status automatically revoked may use the process described in SECTION 4 of this revenue procedure to apply for streamlined retroactive reinstatement of its tax-exempt status if it applies not later than 15 months after the later of the date of the Revocation Letter or the date on which the IRS posted the organization’s name on the Revocation List.

.03 *Retroactive Reinstatement Process (Within 15 Months of Revocation).* An organization that is not eligible to use the streamlined process may use the process described in SECTION 5 of this revenue procedure to apply for retroactive reinstatement of its tax-exempt status if it applies not later than 15 months after the later of the date of the Revocation Letter or the date on which the IRS posted the organization’s name on the Revocation List.

.04 *Retroactive Reinstatement Process.* If it has been more than 15 months from the later of the date of the Revocation Letter or the date on which the IRS posted the organization’s name on the Revocation List, an organization may apply for retroactive reinstatement of its tax-exempt status only under the process described in SECTION 6 of this revenue procedure.

.05 *Post-Mark Date Process.* An organization may apply for reinstatement of its tax-exempt status effective from the Post-Mark Date at any time, regardless of whether it is eligible to use any of the three retroactive reinstatement processes described in SECTIONS 4 through 6 of this revenue procedure, by using the process described in SECTION 7 of this revenue procedure.

### SECTION 2. DEFINITIONS

.01 For purposes of this revenue procedure –

- (1) “Application” means Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*; Form 1024, *Application for Recognition of Exemption Under Section 501(a)*; or any other prescribed form or procedure regularly used to apply for recognition of exempt status as provided in Rev. Proc. 2013-9, 2013-2 I.R.B. 255, or its successor.
- (2) “Annual Return” means the return that the organization must file annually under section 6033(a) (e.g., Form 990, *Return of Organization Exempt from Income Tax*, Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax*, or Form 990-PF, *Return of Private Foundation*).
- (3) “Post-Mark Date” means the date on which the organization files an Application for reinstatement of its tax-exempt status.
- (4) “Reasonable Cause Statement” means the statement described in SECTION 8 of this revenue procedure.
- (5) “Revocation Date” means the date on which the organization’s exempt status is automatically revoked pursuant to section 6033(j)(1) for failing to file an Annual Return or notice for three consecutive years. The Revocation Date is the date set by the Secretary for the filing of the third Annual Return or notice, although an organization’s exempt status will not be automatically revoked pursuant to section 6033(j) unless the organization failed to file an Annual Return or notice for three consecutive years on or before

the date, including any requested extensions, set by the Secretary for the filing of the third Annual Return or notice.

- (6) “Revocation Letter” means the letter issued by the IRS to the organization providing notice that the organization’s exempt status is revoked for failing to file an Annual Return or notice for three consecutive years on or before the date set by the Secretary for the filing such third Annual Return or notice.
- (7) “Revocation List” means the list of all organizations that have had their tax-exempt statuses revoked under section 6033(j)(1), which the Secretary is required to publish and maintain. The IRS publishes the Revocation List on (<http://www.irs.gov/Charities-&Non-Profits/Exempt-Organizations-Select-Check>).

### SECTION 3. BACKGROUND

.01 In general, section 6033(a)(1) requires an organization exempt from taxation under section 501(a) or a nonexempt charitable trust treated as a private foundation under section 4947(a)(1) to file an Annual Return. Most small organizations (other than private foundations or section 509(a)(3) supporting organizations) whose annual gross receipts are normally not more than \$50,000 (\$25,000 for taxable years beginning before January 1, 2010) are not required to file an Annual Return, but are required to file an annual notice, Form 990-N, instead. *See* I.R.C. § 6033(a)(3) and 6033(i); Rev. Proc. 2011-15, 2011-3 I.R.B. 322.

.02 Currently, an organization (other than a private foundation or supporting organization) may file Form 990-N if the organization normally has annual gross receipts of \$50,000 or less. An organization may file Form 990-EZ if the organization has gross receipts of less than \$200,000 and total assets of less than \$500,000 at the end of the taxable year. However, these dollar thresholds are subject to change.

.03 The Pension Protection Act of 2006, Pub. L. No.109-280, 120 Stat. 780, § 1223 (2006) (“PPA”), added section 6033(j) to the Code, effective for taxable years beginning after 2006.

.04 Section 6033(j)(1) automatically revokes the tax-exempt status of any organization described in section 6033(a)(1) that fails to file a required Annual Return for three consecutive years or any organization described in section 6033(i) that fails to file an Annual Return or notice for three consecutive years. Revocation under section 6033(j)(1) is effective on and after the date set by the Secretary for the filing of the third Annual Return or notice.

.05 In accordance with section 6033(j)(1), the IRS updates the Revocation List monthly. The IRS also mails a letter to the last known address of each organization on the Revocation List to notify the organization that its tax-exempt status has been revoked under section 6033(j)(1).

.06 Section 6033(j)(2) provides that any organization that has had its tax-exempt status automatically revoked under section 6033(j)(1) must apply to the IRS in order to obtain reinstatement of its tax-exempt status, regardless of whether the organization was originally required to apply for recognition of its tax exemption. For example, if the tax-exempt status of a subordinate organization included in a group exemption letter is automatically revoked under section 6033(j)(1), the subordinate organization must apply for reinstatement of its tax-exempt status on its own behalf. If the Application is approved, the effective date of the organization's reinstated tax-exempt status generally will be the Post-Mark Date. However, section 6033(j)(3) provides that if, upon application for reinstatement, an organization "can show to the satisfaction of the Secretary evidence of reasonable cause for the failure described in [section 6033(j)(1)], the organization's exempt status may, in the discretion of the Secretary, be reinstated effective from the date of the revocation."

.07 Section 6652 provides for penalties for failure to file certain information returns. Section 6652(c)(1)(A)(i) imposes a penalty for failure to file a return required under section 6033 on the date and in the manner prescribed by section 6033. Section 6652(c)(1)(E) provides that the penalty does not apply to the notice required under section 6033(i) (Form 990-N).

#### SECTION 4. STREAMLINED RETROACTIVE REINSTATEMENT OF TAX-EXEMPT STATUS FOR SMALL ORGANIZATIONS WITHIN 15 MONTHS OF REVOCATION.

.01 An organization that was eligible to file either Form 990-EZ or 990-N for each of the three consecutive years that it failed to file, and that has not previously had its tax-exempt status automatically revoked pursuant to section 6033(j), may apply to have its tax-exempt status retroactively reinstated effective from the Revocation Date if it does both of the following:

- (1) Completes and submits an Application at the address provided in the instructions to the Application not later than 15 months after the later of the date of the Revocation Letter or the date on which the IRS posted the organization's name on the Revocation List. To facilitate processing, organizations should write "Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement" on the top of the Application.
- (2) Includes the appropriate user fee with the Application. *See* Rev. Proc. 2013-8, 2013-1 I.R.B. 237, section 6.07, or its successor.

.02 If an organization files an Application pursuant to SECTION 4.01 and its Application is approved, then for purposes of section 6033(j), the organization will be deemed to have reasonable cause for its failures to file Forms 990-EZ or 990-N, as applicable, for three consecutive years and it will be reinstated retroactively to the Revocation Date. This rule will apply to Applications submitted before the date the IRS revises the Form 1023 and Form 1024 to permit organizations that otherwise qualify for retroactive reinstatement under this SECTION 4 to demonstrate reasonable cause by attesting that the organization's failure to file was not intentional and that it has put in place procedures to file in the future. After such date, reasonable cause may be demonstrated through that attestation.

.03 The Service will not impose the penalty under section 6652(c) for failure to file Annual Returns for the three consecutive taxable years for which the orga-

nization was required, but failed, to file Form 990-EZ, if the organization that is retroactively reinstated under this SECTION 4, files properly completed and executed paper Forms 990-EZ for all such taxable years. For any year for which the organization was eligible to file a Form 990-N, the organization is not required to file a prior year Form 990-N or Form 990-EZ for such year. The Forms 990-EZ must be mailed to the following address:

Department of Treasury  
Internal Revenue Service Center  
Ogden, UT 84201-0027

The organization should write "Retroactive Reinstatement" on the Forms 990-EZ.

#### SECTION 5. RETROACTIVE REINSTATEMENT OF TAX-EXEMPT STATUS WITHIN 15 MONTHS OF REVOCATION.

.01 An organization that is not eligible to apply under SECTION 4 of this revenue procedure may apply to have its tax-exempt status retroactively reinstated effective from the Revocation Date if it does all of the following:

- (1) Completes and submits the appropriate Application to the address provided in the instructions to the Application not later than 15 months after the later of the date of the Revocation Letter or the date on which the IRS posted the organization's name on the Revocation List. To facilitate processing, organizations should write "Revenue Procedure 2014-11, Retroactive Reinstatement" on top of the Application.
- (2) Includes the appropriate user fee with the Application. *See* Rev. Proc. 2013-8, 2013-1 I.R.B. 237, section 6.07, or its successor.
- (3) Includes the Reasonable Cause Statement described in SECTION 8.01 of this revenue procedure with the Application;
- (4) Includes a statement with the Application confirming that it has filed the Annual Returns required in step (5) below.
- (5) Files properly completed and executed paper Annual Returns for all

taxable years in the consecutive three-year period for which the organization was required, and failed, to file Annual Returns (and for any other taxable years after such period and before the Post-Mark Date for which required returns were due and not filed). The Annual Returns must be mailed to the following address:

Department of the Treasury  
Internal Revenue Service Center  
Ogden, UT 84201-0027

.02 The Service will not impose the penalty under section 6652(c) for the failure to file Annual Returns for the three consecutive taxable years for which the organization was required, but failed, to file Annual Returns, if the organization's Application is approved, it satisfies all the requirements of SECTION 5.01 of this revenue procedure, and the organization is retroactively reinstated effective from the Revocation Date. The organization should write "Retroactive Reinstatement" on the Annual Returns.

#### SECTION 6. RETROACTIVE REINSTATEMENT MORE THAN 15 MONTHS AFTER REVOCATION

.01 An organization that applies for reinstatement of its tax-exempt status more than 15 months from the later of the date of the Revocation Letter or the date on which the IRS posted the organization's name on the Revocation List may have its tax-exempt status retroactively reinstated effective from the Revocation Date only if it satisfies all the requirements of SECTION 5.01 of this revenue procedure, except that it must provide the Reasonable Cause Statement described in SECTION 8.02 of this revenue procedure (in place of the one described in SECTION 8.01) for the requirement described in SECTION 5.01(3).

.02 The Service will not impose the penalty under section 6652(c) for the failure to file Annual Returns for the three consecutive taxable years for which the organization was required, but failed, to file Annual Returns, if the organization's Application is approved, it satisfies all the requirements of SECTION 6.01 of this revenue procedure, and the organization is

retroactively reinstated effective from the Revocation Date. The organization should write "Retroactive Reinstatement" on the Annual Returns.

#### SECTION 7. REINSTATEMENT OF TAX-EXEMPT STATUS FROM POST-MARK DATE

.01 An organization may apply for reinstatement of its tax-exempt status effective from the Post-Mark Date by completing and submitting the appropriate Application to the address provided in the instructions to the Application and including the appropriate user fee with the Application. To facilitate processing, the organization should write "Revenue Procedure 2014-11, Reinstatement Post-Mark Date" on the top of the Application.

#### SECTION 8. REASONABLE CAUSE STATEMENT

.01 To be retroactively reinstated under SECTION 5 of this revenue procedure, an organization must establish reasonable cause with respect to its failure to file a required Annual Return or notice for at least one of the three consecutive years in which it failed to file.

.02 To be retroactively reinstated under SECTION 6 of this revenue procedure, an organization must establish reasonable cause with respect to its failure to file a required Annual Return or notice for all three years that it failed to file such Annual Returns or notice.

.03 To establish reasonable cause under this section of this revenue procedure, an organization must establish that it exercised ordinary business care and prudence in determining and attempting to comply with its reporting requirements under section 6033. In determining whether the organization establishes reasonable cause, the IRS will take into account all pertinent facts and circumstances.

.04 The Reasonable Cause Statement under paragraph .01 or .02 must provide all of the facts that support a claim for reasonable cause for failing to file a required Annual Return or notice for the relevant tax year or period, including a detailed description of all the facts and circumstances that led to the failure, the discovery of the failure, and the steps that

have been or will be taken to avoid or mitigate future failures.

.05 The following factors would weigh in favor of finding reasonable cause (with no single factor being either necessary or determinative):

(1) The organization's failure was due to its reasonable, good faith reliance on erroneous written information from the IRS, stating that the organization was not required to file a return or notice under section 6033, provided the IRS was made aware of all relevant facts;

(2) The failure to file the return or notice arose from events beyond the organization's control ("impediment") that made it impossible for the organization to file a return or notice for the year;

(3) The organization acted in a responsible manner by undertaking significant steps to avoid or mitigate the failure to file the required return or notice and to prevent similar failures in the future, including, but not limited to—

(a) Attempting to prevent an impediment or a failure, if it was foreseeable;

(b) Acting as promptly as possible to remove an impediment or correct the cause of the reporting failure, once the failure was discovered; and

(c) After the failure was discovered, implementing safeguards designed to ensure future compliance with the reporting requirements under section 6033; and

(4) The organization has an established history of complying with its reporting requirements (if any) under section 6033 and/or any other applicable reporting or other requirements under the Code.

.06 The Reasonable Cause Statement must also include an original declaration, dated and signed under penalties of perjury by an officer, director, trustee, or other official who is authorized to sign for the organization in the following form:

I, (Name), (Title) declare, under penalties of perjury, that I am authorized to sign this request for retroac-

tive reinstatement on behalf of [Name of Organization], and I further declare that I have examined this request for retroactive reinstatement, including the written explanation of all the facts of the claim for reasonable cause, and to the best of my knowledge and belief, this request is true, correct, and complete.

## SECTION 9. SUBSEQUENT AUTOMATIC REVOCATIONS

.01 An organization whose tax-exempt status has been automatically revoked and reinstated may have its tax-exempt status automatically revoked again under section 6033(j)(1) if it fails to file required Annual Returns or notices for another three consecutive taxable year period beginning with the taxable year in which the IRS approves its application for reinstatement of tax-exempt status. For example, if an organization reporting on a calendar year basis has its tax-exempt status automatically revoked for failing to file required Annual Returns or notices for 2009, 2010, and 2011 and receives a determination letter dated September 1, 2013, reinstating its tax-exempt status, the organization must file an Annual Return or notice for 2013, 2014, and 2015 by the due date of the 2015 Annual Return or notice to avoid having its tax-exempt status automatically revoked again. An organization seeking reinstatement of its tax-exempt status as a result of a subsequent revocation may apply for reinstatement of its tax-exempt status under SECTION 5, SECTION 6, or SECTION 7 of this revenue procedure by following the applicable requirements.

## SECTION 10. EFFECTIVE DATE

.01 *In general.* This revenue procedure is effective for Applications submitted after January 02, 2014.

.02 *Transition Relief* –

- (1) *Pending applications.* To the extent the rules in this revenue procedure benefit an organization's ability to have its tax exempt status retroactively reinstated, the IRS will apply this revenue procedure to Applications that it has already received and are pending.

(2) *Previously reinstated.* (a) An organization that applied for and received reinstatement of its tax-exempt status effective from the Post-Mark Date prior to the effective date of this revenue procedure, and that would have satisfied the streamlined retroactive reinstatement requirements of SECTION 4, will be reinstated effective from the Revocation Date. The organization should keep its determination letter reinstating its tax-exempt status and a copy of this revenue procedure with its books and records.

(b). An organization that applied for and received reinstatement of its exempt status effective from the Post-Mark Date prior to the effective date of this revenue procedure, and that would have satisfied the retroactive reinstatement requirements of SECTION 5 or 6 of this revenue procedure, may reapply by submitting a copy of the Application it previously filed to receive reinstatement and complying with the other requirements of the applicable section of this revenue procedure on or before May 2, 2014, except that the user fee is waived. In addition, the organization should include with its copy of its previous Application a copy of its determination letter reinstating its tax-exempt status. The copy of the Application (including all other required items) should be mailed to the following address:

Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

## SECTION 11. EFFECT ON OTHER DOCUMENTS

Notice 2011–44, 2011–25 I.R.B. 883, is modified and superseded.

## SECTION 12. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and approved under OMB control number 1545–2206.

The collection of information in this revenue procedure is in SECTIONS 5 and 6. In order to have its tax-exempt status retroactively reinstated under section 6033(j)(3), an organization must show to the satisfaction of the IRS evidence that it exercised ordinary business care and prudence in determining and attempting to comply with its reporting obligations under section 6033 for one or more of the three years that it failed to meet such requirements. This information is necessary for inspection by the IRS in determining whether reasonable cause exists. The collection of information is required to meet the reasonable cause standard under section 6033(j)(3). The likely respondents providing the information required in SECTIONS 5 and 6 of this revenue procedure are tax-exempt organizations that have had their tax-exempt statuses automatically revoked under section 6033(j)(1), have applied for reinstatement of such status under section 6033(j)(2), and are requesting that the reinstatement be made retroactive to the date of revocation under section 6033(j)(3).

Estimated total annual reporting burden: 6,206 hours.

Estimated average annual burden per respondent: 1 hour.

Estimated number of respondents over the next three years: 18,618.

Additional collection of information is proposed in SECTIONS 4, 5, 6, and 7 of this revenue procedure, which will be reported and approved through Forms 1023 and 1024 (OMB approval numbers 1545–0056 and 1545–0057, respectively).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

## SECTION 13. FOR FURTHER INFORMATION CONTACT:

For additional information, please contact Timothy Berger at 202-317-8533 or Melinda Williams at 202-317-8532. These are not toll free numbers.

*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability*  
(Also: Part I, Sections 47 and 704; 1.46-3, 1.704-1.)

## Rev. Proc. 2014-12

### SECTION 1. PURPOSE

This revenue procedure establishes the requirements (the Safe Harbor) under which the Internal Revenue Service (the Service) will not challenge partnership allocations of § 47 rehabilitation credits by a partnership to its partners. The Treasury Department and the Service intend for the Safe Harbor to provide partnerships and partners with more predictability regarding the allocation of § 47 rehabilitation credits to partners of partnerships that rehabilitate certified historic structures and other qualified rehabilitated buildings.

### SECTION 2. BACKGROUND

Section 38(a) provides a credit against income taxes for certain business credits. Business credits include the investment credit determined under § 46. Section 38(b). Section 46 provides that, for purposes of § 38, the amount of the investment credit includes the rehabilitation credit.

Section 47(a) provides that the rehabilitation credit for any taxable year is the sum of 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

Section 47(b)(1) provides that qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which the qualified rehabilitated building is placed in service.

Section 50 provides additional rules for computing the investment credit. Section 50(d)(5) makes applicable rules similar to

the rule of former § 48(d) (relating to certain leased property). Accordingly, a person who is a lessor of certain property may elect with respect to the property to treat the lessee as having acquired the property if specified requirements are met, including the income inclusion requirement of former § 48(d)(5).

Section 704(a) provides that a partner's distributive share of income, gain, loss, deduction, or credit shall be, except as otherwise provided in chapter 1 of subtitle A of Title 26, determined by the partnership agreement. Under § 704(b), a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with the partner's interest in the partnership (taking into account all facts and circumstances) if (1) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof), or (2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

Section 1.704-1(b)(4)(ii) provides that, with respect to the investment tax credit provided by § 38, allocations of cost or qualified investment made in accordance with § 1.46-3(f) shall be deemed to be made in accordance with the partners' interests in the partnership. Under § 1.46-3(f)(2)(i), for purposes of § 47, each partner's share of the qualified rehabilitation expenditures is determined in accordance with the ratio in which the partners divide the general profits of the partnership (that is, the taxable income of the partnership described in § 702(a)(8)) regardless of whether the partnership has a profit or loss for its taxable year during which the qualified rehabilitation building is placed in service.

In *Historic Boardwalk Hall, LLC v. Commissioner*, 694 F.3d 425 (3d Cir. 2012), *cert. denied*, U.S., No. 12-901, May 28, 2013, the Third Circuit considered whether an investor's interest in the success or failure of a partnership that incurred qualifying rehabilitation expenditures was sufficiently meaningful for the investor to qualify as a partner in that partnership. The agreements governing the Historic Boardwalk Hall transaction ensured that the investor would receive

the § 47 rehabilitation credits (or their cash equivalent) and a preferred return, with only a remote opportunity for additional sharing in profit. Both the § 47 rehabilitation credits and the preferred return were guaranteed as part of the transaction. The preferred return guarantee was funded. The Third Circuit determined that the investor's return from the partnership was effectively fixed, and that the investor also had no meaningful downside risk because its investment was guaranteed. The Third Circuit agreed with the Commissioner's reallocation of all of the partnership's claimed losses and tax credits from the investor to the principal, holding that "because [the investor] lacked a meaningful stake in either the success or failure of [the partnership], it was not a bona fide partner." *Id.* at 463.

### SECTION 3. SCOPE

The Safe Harbor in section 4 of this revenue procedure applies in the case of a partnership that validly claims the § 47 rehabilitation credit (Partnership). The Service will not challenge a Partnership's allocations of validly claimed § 47 rehabilitation credits if the Partnership and its partners satisfy the Safe Harbor. However, taxpayers should not infer that compliance with the Safe Harbor ensures that the § 47 rehabilitation credits are otherwise valid. A Partnership and its partners that do not satisfy each of the requirements in section 4 of this revenue procedure do not qualify for the Safe Harbor.

Partners in a Partnership may include one or more managers authorized to act for the Partnership (Principals) and one or more Investors (as defined in section 4.01 of this revenue procedure). A Partnership can be structured as either a Developer Partnership or a Master Tenant Partnership. A Developer Partnership is a Partnership that owns and restores a qualified rehabilitation building or a certified historic structure (Building). A Master Tenant Partnership is a Partnership that leases a Building from a Developer Partnership (Head Lease) and for which an election is made pursuant to § 1.48-4(a)(1) to treat the Master Tenant Partnership as having acquired the Building solely for purposes of the § 47 rehabilitation credit.

This revenue procedure applies only with respect to allocations of § 47 reha-

bilitation credits from qualified rehabilitation expenditures. This revenue procedure does not apply to federal credits other than the § 47 rehabilitation credit or to state credit transactions. It does not indicate the circumstances under which the Service may challenge allocations of such other credits or the circumstances under which a transfer of state credits by a partnership may be treated as a disguised sale under § 707(a)(2)(B). Determinations of whether an expenditure is a qualified rehabilitation expenditure and whether a Partnership is the owner of a Building for purposes of claiming the § 47 rehabilitation credit are also outside the scope of this revenue procedure. In addition, this revenue procedure does not address how or if the tax-exempt use property rules under § 168(h) apply.

The Safe Harbor set forth in this revenue procedure is not intended to provide substantive rules and no inference should be drawn as to the validity of partnership allocations for taxpayers that fail to satisfy the Safe Harbor. Further, this revenue procedure does not address how a Partnership is required to allocate the income inclusion required by § 50(d)(5). The Treasury Department and the Service do not view the Safe Harbor as determinative of whether an Investor is a partner or acting in its capacity as a partner in an arrangement or transaction that is outside the scope of this revenue procedure. The Treasury Department and the Service do not intend the inclusion of any particular criterion in the Safe Harbor to be an indication either of our views of the significance of that criterion with respect to any other federal or state tax credit transactions, or of whether a Partnership has the requisite benefits and burdens of ownership of a Building. The Service will not provide private letter rulings to individual taxpayers regarding the allocation of § 47 rehabilitation credits.

#### SECTION 4. SAFE HARBOR

.01 *Investors Defined.* Investors are Partnership partners (other than Principals) that hold an interest in the Partnership that is described in section 4.02(2) of this revenue procedure. An Investor may be an initial partner in the Partnership or may be a person who later becomes an Investor by purchasing a Partnership interest. If the Investor receives an alloca-

tion of § 47 rehabilitation credits from a Master Tenant Partnership, the Investor cannot also invest in the Developer Partnership other than through an indirect interest in the Developer Partnership held through the Master Tenant Partnership. This prohibition does not apply to a separately negotiated, distinct economic arrangement (e.g., a separate arm's length investment into the Developer Partnership to share in allocations of federal new markets tax credits or low income housing credits).

##### .02 *Partners' Partnership Interests.*

(1) *Principal's minimum Partnership interest.* The Principal must have a minimum one percent interest in each material item of Partnership income, gain, loss, deduction, and credit at all times during the existence of the Partnership.

##### (2) *Investor's Partnership interest.*

(a) *Investor's minimum Partnership interest.* The Investor must have, at all times during the period it owns an interest in the Partnership, a minimum interest in each material item of Partnership income, gain, loss, deduction, and credit equal to at least five percent of the Investor's percentage interest in each such item for the taxable year for which the Investor's percentage share of that item is the largest (as adjusted for sales, redemptions, or dilution of the Investor's interest).

(b) *Requirements regarding the Investor's Partnership interest.* The Investor's Partnership interest must constitute a bona fide equity investment with a reasonably anticipated value commensurate with the Investor's overall percentage interest in the Partnership, separate from any federal, state, and local tax deductions, allowances, credits, and other tax attributes to be allocated by the Partnership to the Investor. An Investor's Partnership interest is a bona fide equity investment only if that reasonably anticipated value is contingent upon the Partnership's net income, gain, and loss, and is not substantially fixed in amount. Likewise, the Investor must not be substantially protected from losses from the Partnership's activities. The Investor must participate in the profits from the Partnership's activities in a manner that is not limited to a preferred return that is in the nature of a payment for capital.

(c) *Arrangements to reduce the value of the Investor's Partnership interest.* The value of the Investor's Partnership interest may not be reduced through fees (including developer, management, and incentive fees), lease terms, or other arrangements that are unreasonable as compared to fees, lease terms, or other arrangements for a real estate development project that does not qualify for § 47 rehabilitation credits, and may not be reduced by disproportionate rights to distributions or by issuances of interests in the Partnership (or rights to acquire interests in the Partnership) for less than fair market value consideration. A sublease agreement of the Building from the Master Tenant Partnership back to the Developer Partnership or to the Principal of either the Developer Partnership or Master Tenant Partnership will be deemed unreasonable unless the sublease is mandated by a third party unrelated to the Principal. The terms of a sublease agreement of the Building by the Master Tenant Partnership to any person will be deemed unreasonable unless the duration of the sublease is shorter than the duration of the Head Lease. The Master Tenant Partnership may not terminate its lease of the Building from the Developer Partnership during the period in which the Investor remains as a partner in the Master Tenant Partnership.

.03 *Investor's Minimum Unconditional Contribution.* The Investor must contribute a minimum unconditional amount (the Investor Minimum Contribution) to the Partnership before the date that the Building is placed in service. The Investor Minimum Contribution equals 20 percent of the Investor's total expected capital contributions required under the agreements relating to the Partnership as of the date the Building is placed in service. The Investor must maintain the Investor Minimum Contribution throughout the duration of its ownership of its Partnership interest in the Partnership (and the Investor Minimum Contribution must not be protected against loss through any arrangement, directly or indirectly, by any person involved with the rehabilitation except as permitted under section 4.05(1) of this revenue procedure). Contributions of promissory notes or other obligations for which the Investor is the maker are not included in determining whether the In-

vestor satisfies the Investor Minimum Contribution.

.04 *Contingent Consideration.* At least 75 percent of the Investor's total expected capital contributions must be fixed in amount before the date the Building is placed in service. The Investor must reasonably expect to meet its funding obligations as they arise.

.05 *Guarantees and Loans.*

(1) *Permissible guarantees.*

(a) The following unfunded guarantees may be provided to the Investor—(i) Guarantees for the performance of any acts necessary to claim the § 47 rehabilitation credits;

(ii) Guarantees for the avoidance of any act (or omissions) that would cause the Partnership to fail to qualify for the § 47 rehabilitation credits or that would result in a recapture of the § 47 rehabilitation credits; and,

(iii) Guarantees that are not described as impermissible guarantees under section 4.05(2) of this revenue procedure.

(b) Examples of unfunded guarantees permitted under this section include completion guarantees, operating deficit guarantees, environmental indemnities, and financial covenants.

(c) For purposes of this section 4.05(1), a guarantee is unfunded if no money or property is set aside to fund all or any portion of the guarantee, and if neither the person making the guarantee (the guarantor) nor any person under the control of the guarantor agrees to maintain a minimum net worth in connection with the guarantee. Further, reserves in an amount less than or equal to the Partnership's reasonably projected operating expenses for a twelve-month period will not constitute an amount set aside to fund the guaranteed amount for purposes of this section.

(2) *Impermissible guarantees.*

(a) No person involved in any part of the rehabilitation transaction may directly or indirectly guarantee or otherwise insure the Investor's ability to claim the § 47 rehabilitation credits, the cash equivalent of the credits, or the repayment of any portion of the Investor's contribution due to inability to claim the § 47 rehabilitation credits in the event the Service challenges all or a portion of the transactional structure of the Partnership. Further, no person involved in any part of the rehabilitation

transaction may guarantee that the Investor will receive Partnership distributions or consideration in exchange for its Partnership interest (except for a fair market value sale right described in section 4.06(2)). This requirement does not prohibit the Investor from procuring insurance from persons not involved with the rehabilitation or the Partnership.

(b) No person involved in any part of the rehabilitation transaction may pay the Investor's costs or indemnify the Investor for the Investor's costs if the Service challenges the Investor's claim of the § 47 rehabilitation credits.

(c) No person involved in any part of the rehabilitation transaction may offer a guarantee described in section 4.05(1) of this revenue procedure that is not an unfunded guarantee described in section 4.05(1)(c).

(3) *Loans.* A Developer Partnership, a Master Tenant Partnership, or the Principal of either the Developer Partnership or the Master Tenant Partnership may not lend any Investor the funds to acquire any part of the Investor's interest in the Partnership or guarantee or otherwise insure any indebtedness incurred or created in connection with the Investor's acquisition of its Partnership interest.

.06 *Purchase Rights and Sale Rights.*

(1) *Purchase rights.* Neither the Principal nor the Partnership may have a call option or other contractual right or agreement to purchase or redeem the Investor's interest at a future date (other than a contractual right or agreement for a present sale).

(2) *Sale rights.* The Investor may not have a contractual right or other agreement to require any person involved in any part of the rehabilitation transaction to purchase or liquidate the Investor's interest in the Partnership at a future date at a price that is more than its fair market value determined at the time of exercise of the contractual right to sell.

(3) *Determination of fair market value.* A determination of the fair market value of the Investor's interest in the Partnership may take into account only those contracts or other arrangements creating rights or obligations that meet the requirements of section 4.02(2)(c) of this revenue procedure and that are on arm's length terms.

(4) *Payment of preferred returns, fees, and tax distributions.* Nothing in this paragraph prohibits the payment of any accrued but unpaid fees, preferred returns, or tax distributions owed to the Investor.

(5) *Abandonment.* An Investor may not acquire its interest in the Partnership with the intent of abandoning the interest after the Partnership completes the qualified rehabilitation. If an Investor abandons its interest in the Partnership at any time, the Investor will be presumed to have acquired its interest with the intent of later abandoning it unless the facts and circumstances clearly establish that the Investor did not acquire its interest with the intent of later abandoning it.

.07 *Allocation of § 47 Rehabilitation Credits.* Allocations under the Partnership agreement must satisfy the requirements of § 704(b) and the regulations thereunder. The § 47 rehabilitation credit must be allocated in accordance with § 1.704-1(b)(4)(ii). Solely for purposes of determining whether a Partnership meets the requirements of this section 4.07, the Partnership's allocation to its partners of the income inclusion required by § 50(d)(5) shall not be taken into account.

.08 *Related Parties.* For purposes of this revenue procedure, each of the terms Principal, Partnership, Investor, and person include any related persons. For this purpose, persons are related if they bear a relationship to each other that is specified in § 267(b) or § 707(b)(1).

## SECTION 5. EXAMPLES

The following examples illustrate the application of the requirements of section 4 of the revenue procedure to a transaction in which the Investor invests in a Partnership to obtain the § 47 rehabilitation credits. The examples assume that the tax-exempt use property rules of § 168(h) do not apply. The examples also assume that the Partnership may validly claim the § 47 rehabilitation credits with respect to the rehabilitation of Building (defined below).

.01 *Example 1.* (i) *Transaction Structure.* The Developer Partnership is a limited liability company classified as a partnership for federal income tax purposes. The Developer Partnership is the owner for federal tax purposes of a historic commercial building (Building) that it plans to rehabilitate. The Developer Partnership is

the Partnership for purposes of satisfying the requirements of this revenue procedure.

The Principal and the Investor will own Partnership. The Principal is the manager of the Partnership and authorized to act on behalf of the Partnership. The Investor is an unrelated party that will contribute money to the Partnership in exchange for an interest in the Partnership.

(ii) *Investor's Contribution to Partnership.* The Investor enters into an agreement with the Partnership to acquire an interest in the Partnership in exchange for an expected capital commitment of \$100x, of which \$75x is fixed. Prior to the date Building is placed in service, Investor acquires its interest in the Partnership by making an up front cash contribution of \$20x. Investor reasonably expects to contribute the remaining \$80x of its expected capital commitment upon the achievement of mutually agreed upon milestones (e.g., receiving National Park Service approvals, leasing the Building to tenants).

(iii) *Partnership Interests.* The Partnership is governed by a partnership agreement that satisfies the requirements of § 704(b). From the date the Investor becomes a partner until the date that is five years after the Building is placed in service (Transition Date), the Investor will be allocated 99% of the Partnership's profits and losses, as determined for federal income tax purposes. Consistent with the Partnership's allocation of profit and loss, the Investor will also be allocated, and will claim, 99% of the § 47 rehabilitation credits available to the Partnership. The Principal will be allocated 1% of the profits and losses during this period. As of the Transition Date and until the earlier of the date that the Investor is no longer a member of the Partnership and the date that the Partnership terminates, the Investor will be allocated 5% of the Partnership's profits and losses, and the Principal will be allocated 95% of the Partnership's profits and losses. The Investor has a right to receive a pro rata share of all distributions commensurate with the Investor's share of the Partnership profits. The Investor's partnership interest has a reasonably anticipated value commensurate with the Investor's overall percentage interest in the Partnership, separate from any federal,

state, and local tax deductions, allowances, credits, and other tax attributes to be allocated from the Partnership to the Investor.

(iv) *Partnership Operations.* The Partnership will operate the Building and lease the individual units in the Building to retail businesses under terms that are consistent with lease terms for a real estate development project that does not qualify for § 47 rehabilitation credits. All fees paid by the Partnership, including any fees paid to the Principal, are reasonable and are consistent with fees commonly paid in a real estate development that does not qualify for § 47 rehabilitation credits.

(v) *Guarantees.* No party involved in any part of the rehabilitation has directly or indirectly provided a guarantee to the Investor regarding the Investor's ability to claim of § 47 rehabilitation credits, the cash equivalent of the credits, or the repayment of any portion of the Investor's contribution due to an inability to claim the credits in the event the Service challenges all or a portion of the transactional structure of the Partnership. Further, no party involved in any part of the rehabilitation has directly or indirectly guaranteed the Investor that it will receive distributions from the Partnership or that the Investor will receive consideration in exchange for its Partnership interest (other than the Investor's fair market value sale rights described in paragraph (vi) below). The Partnership and the Principal have provided the Investor with unfunded guarantees commonly provided to investors in commercial real estate development transactions that do not qualify for the § 47 rehabilitation credit. In addition, the Partnership and the Principal provided an unfunded guarantee to the Investor that the Partnership and the Principal will undertake any acts necessary for the Partnership to claim the § 47 rehabilitation credit. Similarly, the Partnership and the Principal have provided an unfunded guarantee to the Investor that the Partnership and the Principal will not engage in any act that will negatively impact the Partnership's ability to claim the § 47 rehabilitation credit or that would result in the recapture of the § 47 rehabilitation credit. The Principal has also provided an unfunded guarantee requiring it to contribute additional cash to the Partnership to the extent of any

Partnership operating deficit. Under the terms of the guarantee, if the Principal or the Partnership fail to meet their obligations, the Investor will be repaid all or a part of its contribution and any costs that Investor has incurred with respect to the transaction. The operating deficit guarantee does not include amounts required to fund expenses for more than twelve months of operation.

(vi) *Purchase Rights and Sale Rights.* Neither the Partnership nor the Principal has any contractual right to purchase the Investor's interest in the Partnership at a future date. For a period of six months beginning on the date that is six months after the Transition Date, the Investor has the right to require the Principal to purchase the Investor's interest for the fair market value of the interest. The Investor did not acquire its interest in the Partnership with the intent of abandoning its interest.

(vii) *Conclusion.* Under the facts of this example, because each requirement set forth in section 4 of this revenue procedure is met by the Partnership and its partners, the Service will not challenge the Partnership's allocation of 99% of the § 47 rehabilitation credits to the Investor.

.02 *Example 2.* (i) *Transaction Structure.* The facts are the same as in Example 1. In addition, the Master Tenant Partnership, a limited liability company classified as a partnership for federal tax purposes, will lease the Building from the Developer Partnership (Head Lease). The terms of the Head Lease are comparable to the lease terms of a real estate development project that does not qualify for § 47 rehabilitation credits. The Developer Partnership will make an election pursuant to § 1.48-4(a)(1) to treat the Master Tenant Partnership as having acquired the Building solely for purposes of the § 47 rehabilitation credits, allowing the Master Tenant Partnership to properly claim the § 47 rehabilitation credits. Therefore, the Master Tenant Partnership is the Partnership for purposes of satisfying the requirements of this revenue procedure. The Partnership will also own an interest in the Developer Partnership. The Investor does not own an interest in the Developer Partnership other than its indirect interest held through the Partnership. Further, the Partnership will sublease the Building to retail

businesses as described in Example 1. The duration of these subleases will be shorter than the Head Lease.

(ii) *Conclusion.* Under the facts of this example, because each requirement set forth in section 4 of this revenue procedure is met by the Partnership and its partners, the Service will not challenge the Partnership's allocation of 99% of the § 47 rehabilitation credits to the Investor.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for allocations of § 47 rehabilitation credits made by a Partnership to its partners on or after December 30, 2013. If a Building was placed in service before December 30, 2013 and the Partnership and its partners satisfied all the requirements of the Safe Harbor provided in section 4 of this revenue procedure at the time the Building was placed in service and thereafter, the Service will not challenge the Partnership's allocations of § 47 rehabilitation tax credits to Investors that are in accordance with § 704(b).

## SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Allison R. Carmody and Joseph R. Worst of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Allison R. Carmody or Joseph R. Worst at (202) 317-5279 (not a toll free call).

## Rev. Proc. 2014-13

### FFI Agreement for Participating FFI and Reporting Model 2 FFI

#### SECTION 1. PURPOSE

This revenue procedure provides guidance to foreign financial institutions (FFIs) entering into an FFI agreement with the Internal Revenue Service (IRS) under section 1471(b) of the Internal Revenue Code (Code) and § 1.1471-4 of the Income Tax Regulations<sup>1</sup> (the FFI agreement) to be

treated as participating FFIs. This revenue procedure also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) (reporting Model 2 FFIs) on complying with the terms of the FFI agreement, as modified by the Model 2 IGA. A reporting Model 2 FFI should interpret the FFI agreement by substituting the term "reporting Model 2 FFI" for "participating FFI" throughout the FFI agreement, except in cases where the FFI agreement explicitly refers to a reporting Model 2 FFI.

#### SECTION 2. BACKGROUND

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111-147 added chapter 4 of Subtitle A (chapter 4 or FATCA) to the Code, comprised of sections 1471 through 1474. On January 28, 2013, the Department of the Treasury (Treasury Department) and the IRS published final regulations under chapter 4 in the Federal Register (78 FR 5874), and, on September 10, 2013, published corrections to those final regulations (collectively, the final chapter 4 regulations). The final chapter 4 regulations provide comprehensive guidance to withholding agents and FFIs; in particular, the regulations under § 1.1471-4 provide the substantive requirements applicable to participating FFIs under the FFI agreement.

On July 29, 2013, the Treasury Department and the IRS issued Notice 2013-43 (2013-31 I.R.B. 113), which revises the timelines for implementation of the FATCA requirements and provides additional guidance concerning the treatment of FFIs located in jurisdictions that have signed intergovernmental agreements for the implementation of FATCA (IGAs) but have not yet brought those IGAs into force. On October 29, 2013, the Treasury Department and the IRS published Notice 2013-69 (2013-46 I.R.B. 503), which sets forth a draft FFI agreement that substantially incorporates the provisions of § 1.1471-4 of the final chapter 4 regulations, as modified by Notice 2013-43 (e.g., to reflect revised timelines for

FATCA implementation). Further, on December 13, 2013, the Treasury Department and the IRS released Announcement 2014-1 (2014-2 I.R.B. 393), which provides that the FFI agreement will be published prior to January 1, 2014. Section 5 of this revenue procedure sets forth the FFI agreement, which finalizes the draft FFI agreement. Modifications to the draft FFI agreement that are incorporated into the FFI agreement are described in section 4 of this revenue procedure.

#### SECTION 3. FATCA REGISTRATION FOR PARTICIPATING FFI OR REPORTING MODEL 2 FFI STATUS

An FFI may register on Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, via the FATCA registration website available at <http://www.irs.gov/fatca> to enter into the FFI agreement on behalf of one or more of its branches so that each of such branches may be treated as a participating FFI and receive a global intermediary identification number (GIIN). A branch of such an FFI that cannot, under the laws of the jurisdiction in which such branch is located, satisfy all of the terms of the FFI agreement will be treated as a limited branch (as defined in the FFI agreement) and will be subject to withholding under section 1471 as a nonparticipating FFI. A reporting Model 2 FFI may also register on the FATCA registration website on behalf of one or more of its branches to obtain a GIIN and to agree to comply with the terms of the FFI agreement, as modified by an applicable Model 2 IGA.

In general, the FFI agreement does not apply to a reporting Model 1 FFI, or any branch of such an FFI, unless the reporting Model 1 FFI has registered a branch located outside of a Model 1 IGA jurisdiction so that such branch may be treated as a participating FFI or reporting Model 2 FFI. In such a case, the terms of the applicable FFI agreement apply to the operations of such branch. With respect to an FFI (or branch of an FFI) that is a qualified intermediary (QI) or an FFI that is a withholding foreign partnership (WP) or a withholding foreign trust (WT), the revised QI, WP, and WT agreements will

<sup>1</sup>Unless otherwise provided, all citations in this revenue procedure and the FFI agreement are to the Internal Revenue Code of 1986 and to the Income Tax Regulations thereunder.

incorporate by reference the requirements of the FFI agreement (including the modifications to the terms of the FFI agreement that are applicable to a reporting Model 2 FFI) and the terms of the FFI agreement will apply to an FFI (or an QI branch of an FFI) that is treated as a participating FFI or reporting Model 2 FFI.

See Announcement 2014-1 and the FATCA registration user guide for more information about the FATCA registration process. Each branch of a participating FFI or reporting Model 2 FFI that is registered, other than a limited branch, will be issued a GIIN to use in connection with complying with the FFI agreement and to identify itself to withholding agents. For information on registration by financial institutions that are QIs, WPs, and WTs, see Announcement 2014-1.

#### SECTION 4. UPDATES FROM DRAFT FFI AGREEMENT

The FFI agreement contains a number of changes to provisions of the draft FFI agreement that needed to be corrected or further clarified.

First, several of the cross-references in the FFI agreement (notably, in section 2 of the FFI agreement) are modified in anticipation of the publication of two sets of temporary regulations to which the updated cross-references relate. One set of temporary regulations will provide further clarifications and modifications to the final chapter 4 regulations (temporary chapter 4 regulations), and a second set of temporary regulations will provide coordinating rules under chapters 3, 4, and 61 of the Code (temporary coordination regulations). Both sets of temporary regulations are expected to be published in early 2014.

Second, the FFI agreement contains revisions to correct minor technical errors in the draft FFI agreement. For example, an incorrect reference to an escrow procedure due to a change in circumstances of an account holder or payee is removed. Similarly, the 30-day period for such change of circumstances in the draft FFI agreement is corrected to a 90-day period in the FFI agreement. The FFI agreement corrects section 6.05(A)(1) of the draft FFI agreement to remove the separate subsection for pooled reporting for a reporting

Model 2 FFI. The types of income previously described in section 6.05(A)(1)(ii) of the draft FFI agreement were not chapter 4 reportable amounts and would not be reported on Form 1042-S.

Third, revisions are made to further clarify the FFI agreement and conform it to the temporary chapter 4 regulations. For example, the terms chapter 4 withholding rate pool (including the U.S. payee pool) and chapter 4 reporting pool are defined and clarified. In addition, as contemplated in Notice 2013-69, the FFI agreement provides that, with respect to calendar years 2015 and 2016, participating FFIs that are required to report foreign reportable amounts paid to nonparticipating FFIs shall report this information on Form 8966. To the extent provided in section 6.04, a participating FFI may report all such payments made to nonparticipating FFIs.

Finally, the FFI agreement also provides for a 2-year transition period during which a reporting Model 2 FFI may elect to apply the due diligence procedures described in the FFI agreement in lieu of those in Annex I of an applicable Model 2 IGA and the FFI agreement is also revised to reflect that this election is made by the reporting Model 2 FFI and not the reporting Model 2 IGA jurisdiction.

#### SECTION 5. FFI AGREEMENT

The text of the FFI agreement is set forth below. The IRS will not provide signed copies of the FFI agreement.

##### Section 1. PURPOSE AND SCOPE

##### Section 2. DEFINITIONS

##### Section 3. DUE DILIGENCE REQUIREMENTS FOR DOCUMENTATION AND IDENTIFICATION OF ACCOUNT HOLDERS AND NON-PARTICIPATING FFI PAYEES

##### Section 4. WITHHOLDING REQUIREMENTS

##### Section 5. DEPOSIT REQUIREMENTS

##### Section 6. INFORMATION REPORTING AND TAX RETURN OBLIGATIONS

##### Section 7. LEGAL PROHIBITIONS ON REPORTING U.S. ACCOUNTS AND ON WITHHOLDING

##### Section 8. COMPLIANCE PROCEDURES

##### Section 9. PARTICIPATING FFI WITHHOLDING CERTIFICATE

##### Section 10. ADJUSTMENTS FOR OVERWITHHOLDING AND UNDERWITHHOLDING AND REFUNDS

##### Section 11. FFI GROUP

##### Section 12. EXPIRATION, MODIFICATION, TERMINATION, DEFAULT, AND RENEWAL OF THIS AGREEMENT

##### Section 13. MISCELLANEOUS PROVISIONS

#### SECTION 1. PURPOSE AND SCOPE

.01 Purpose. THIS AGREEMENT is made under, and in pursuance of, section 1471(b) and § 1.1471-4:

**WHEREAS**, an FFI has completed and submitted a Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, in accordance with its instructions, which registration indicated that one or more of its branches seeks to be treated as a participating FFI, and has represented that such branches are eligible to, and will comply with, the terms of the FFI agreement;

**WHEREAS**, this agreement establishes the FFI's due diligence, withholding, information reporting, tax return filing, and other obligations as a participating FFI under sections 1471 through 1474 and §§ 1.1471-1 through 1.1474-6;

**NOW THEREFORE**, the terms of this agreement are as follows:

**.02 General Obligations.** An FFI that agrees to comply with the terms of this agreement applicable to one or more of its branches will be treated as a participating FFI with respect to such branches, and such participating FFI branches will not be subject to withholding under section 1471. An FFI (or branch of an FFI) must act in its capacity as a participating FFI with respect to all of the accounts that it maintains for purposes of reporting such accounts and must act as a withholding agent to the extent required under this agreement. A branch of an FFI that cannot satisfy all of the terms of this agreement under the laws of the jurisdiction in which such branch is located must meet the conditions described in § 1.1471-4(e)(2)(iii) to be treated as a limited branch and will be subject to withholding under section 1471 as a nonparticipating FFI. A reporting Model 2 FFI may comply with the requirements of the FFI agreement, in-

cluding with respect to due diligence, reporting, and withholding, by applying the rules set forth in this agreement (applied by substituting the term “reporting Model 2 FFI” for “participating FFI” throughout the FFI agreement, except where the provisions of the FFI agreement explicitly refer to a reporting Model 2 FFI).

## SECTION 2. DEFINITIONS

### .01. Scope of Definitions.

(A) **In General.** Unless specifically modified in this agreement, all terms used in this agreement have the same meaning as provided in sections 1471 through 1474, including the regulations thereunder. See § 1.1471-1(b) for a comprehensive list of chapter 4 terms and definitions.

(B) **Reporting Model 2 FFIs.** A reporting Model 2 FFI must use the definitions set forth in the applicable Model 2 IGA with respect to the accounts that it maintains in the Model 2 IGA jurisdiction, unless the Model 2 IGA jurisdiction permits the use of a definition provided in this agreement or § 1.1471-1(b) in lieu of a definition set forth in the applicable Model 2 IGA, and such application does not frustrate the purposes of the Model 2 IGA.

**.02 Account/Financial account.** “Account” or “financial account” means an account described in § 1.1471-1(b)(1).

**.03 Account holder.** “Account holder” has the meaning set forth in § 1.1471-1(b)(2).

**.04 Account maintained by a participating FFI.** “Account maintained by a participating FFI” means an account that a participating FFI is treated as maintaining under § 1.1471-5(b)(5).

**.05 Active NFFE.** In the case of a reporting Model 2 FFI, “active NFFE” means an active NFFE as defined in the applicable Model 2 IGA.

**.06 Backup withholding.** “Backup withholding” has the meaning set forth in § 1.1471-1(b)(7).

**.07 Branch.** “Branch” has the meaning set forth in § 1.1471-1(b)(10).

**.08 Branch that maintains the account.** A branch maintains an account if the rights and obligations of the participating FFI and the account holder with regard to such account (including any assets held in the account) are governed by the laws of the jurisdiction in which the

branch is located. See § 1.1471-5(b)(5) for when an FFI is treated as maintaining an account.

**.09 Certified deemed-compliant FFI.** “Certified deemed-compliant FFI” has the meaning set forth in § 1.1471-1(b)(14).

**.10 Change in circumstances.** For a participating FFI, a “change in circumstances” has the meaning described in § 1.1471-4(c)(2)(iii). In the case of a reporting Model 2 FFI that applies the procedures of Annex I of the applicable Model 2 IGA with respect to an account, a change of circumstances has the meaning that such term has under Annex I of the applicable Model 2 IGA.

**.11 Chapter 4 reportable amount.** “Chapter 4 reportable amount” has the meaning set forth in § 1.1471-1(b)(18).

**.12 Chapter 4 reporting pool.** “Chapter 4 reporting pool” means a chapter 4 withholding rate pool of account holders and payees, described in section 6.05(A)(1)(i) of this agreement, associated with a withholdable payment that is within a particular income code (as provided in the instructions to Form 1042-S) reported on Form 1042-S and for which a separate Form 1042-S is required to be filed.

**.13 Chapter 4 status.** “Chapter 4 status” has the meaning set forth in § 1.1471-1(b)(19).

**.14 Chapter 4 withholding rate pool.** “Chapter 4 withholding rate pool” means a pool provided on an FFI withholding statement (or a chapter 4 withholding statement, as defined in § 1.1471-3(c)(3)) with respect to a single type of income (e.g., interest or dividends) and consisting of: (i) a class of recalcitrant account holders described in § 1.1471-4(d)(6) (including a pool of recalcitrant account holders to which the escrow procedures for dormant account applies, or for recalcitrant account holders described in section 4.01(D) of this agreement for which the participating FFI has made a backup withholding election), (ii) payees that are non-participating FFIs that are subject to withholding under chapter 4, or (iii) U.S. payees as described in section 9.02(B) of this agreement (in the case of a participating FFI) or sections 9.02(B) and 9.02(C) of this agreement (in the case of a reporting Model 2 FFI).

**.15 Custodial institution.** “Custodial institution” has the meaning set forth in § 1.1471-1(b)(25).

**.16 Deemed-compliant FFI.** “Deemed-compliant FFI” has the meaning set forth in § 1.1471-1(b)(27).

**.17 Depository institution.** “Depository institution” has the meaning set forth in § 1.1471-1(b)(30).

**.18 Effective date of the FFI agreement.** The effective date of the FFI agreement with respect to an FFI or a branch of an FFI that is a participating FFI is the date on which the IRS issues a GIIN to the FFI or branch. For a participating FFI that receives a GIIN prior to June 30, 2014, the effective date of the FFI agreement is June 30, 2014.

**.19 Entity account.** “Entity account” has the meaning set forth in § 1.1471-1(b)(40).

**.20 Entity payee.** “Entity payee” means a payee that is an entity and that is not an account holder.

**.21 Excepted NFFE.** “Excepted NFFE” has the meaning set forth in § 1.1471-1(b)(41).

**.22 Exempt beneficial owner.** “Exempt beneficial owner” has the meaning set forth in § 1.1471-1(b)(42).

**.23 Exempt recipient.** “Exempt recipient” has the meaning set forth in § 1.1471-1(b)(43).

**.24 Financial institution (FI).** “Financial institution” or “FI” has the meaning set forth in § 1.1471-1(b)(50).

**.25 FFI group.** “FFI group” means an expanded affiliated group (as defined in § 1.1471-5(i)) that includes one or more participating FFIs or, in the case of a reporting Model 2 FFI, a group of related entities as defined in an applicable Model 2 IGA.

**.26 FFI member.** “FFI member” means an FFI that is a member of an FFI group.

**.27 FFI withholding statement.** “FFI withholding statement” means a withholding statement provided by a participating FFI that meets the requirements of section 9.02 of this agreement.

**.28 Foreign financial institution (FFI).** “Foreign financial institution” or “FFI” has the meaning set forth in § 1.1471-1(b)(47).

**.29 Foreign reportable amount.** “Foreign reportable amount” means a payment

of foreign source amounts described in § 1.1471-4(d)(2)(ii)(F).

**.30 Form 945.** “Form 945” means IRS Form 945, *Annual Return of Withheld Federal Income Tax*.

**.31 Form 1042.** “Form 1042” means IRS Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*.

**.32 Form 1042-S.** “Form 1042-S” means IRS Form 1042-S, *Foreign Person’s U.S. Source Income Subject to Withholding*.

**.33 Form 1099.** “Form 1099” means IRS Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*; IRS Form 1099-DIV, *Dividends and Distributions*; IRS Form 1099-INT, *Interest Income*; IRS Form 1099-MISC, *Miscellaneous Income*; IRS Form 1099-OID, *Original Issue Discount*, and any other form in the IRS Form 1099 series appropriate to the type of payment required to be reported.

**.34 Form 8957.** “Form 8957” means IRS Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, and includes the online version of the form on the FATCA registration website available at <http://www.irs.gov/fatca>.

**.35 Form 8966.** “Form 8966” means IRS Form 8966, *FATCA Report*, and includes the FATCA Report XML.

**.36 GIIN.** “GIIN” or “global intermediary identification number” has the meaning set forth in § 1.1471-1(b)(57).

**.37 Grandfathered obligation.** “Grandfathered obligation” has the meaning set forth in § 1.1471-2(b)(2)(i).

**.38 Individual account.** “Individual account” has the meaning set forth in § 1.1471-1(b)(64).

**.39 Intergovernmental Agreement (IGA).** “Intergovernmental Agreement” or “IGA” has the meaning set forth in § 1.1471-1(b)(67).

**.40 IRS FFI List.** “IRS FFI List” has the meaning set forth in § 1.1471-1(b)(73).

**.41 Lead FI.** “Lead FI” means an FFI or U.S. financial institution that is designated by members of the FFI group to initiate and manage FATCA registration via the FATCA registration website for such FFI members of the FFI group and that agrees to the responsibilities described in section 11.02 of this agreement.

**.42 Limited branch.** “Limited branch” has the meaning set forth in § 1.1471-1(b)(76).

**.43 Limited FFI.** “Limited FFI” has the meaning set forth in § 1.1471-1(b)(77).

**.44 Model 1 IGA.** “Model 1 IGA” has the meaning set forth in § 1.1471-1(b)(78).

**.45 Model 2 IGA.** “Model 2 IGA” has the meaning set forth in § 1.1471-1(b)(79).

**.46 New account.** “New account” means an account other than a preexisting account.

**.47 Non-consenting U.S. account.** For purposes of a reporting Model 2 FFI, “non-consenting U.S. account” has the meaning that such term has under an applicable Model 2 IGA.

**.48 Non-exempt recipient.** “Non-exempt recipient” has the meaning set forth in § 1.1471-1(b)(81).

**.49 Non-financial foreign entity (NFFE).** “Non-financial foreign entity” or “NFFE” has the meaning set forth in § 1.1471-1(b)(80).

**.50 Nonparticipating FFI.** “Nonparticipating FFI” has the meaning set forth in § 1.1471-1(b)(82).

**.51 Nonqualified intermediary (NQI).** “Nonqualified intermediary” or “NQI” has the meaning set forth in § 1.1471-1(b)(85).

**.52 Non-U.S. account.** “Non-U.S. account” has the meaning set forth in § 1.1471-1(b)(84).

**.53 Non-U.S. payor.** “Non-U.S. payor” means a payor other than a U.S. payor.

**.54 Nonwithholding foreign partnership (NWP).** “Nonwithholding foreign partnership” or “NWP” has the meaning set forth in § 1.1471-1(b)(86).

**.55 Nonwithholding foreign trust (NWT).** “Nonwithholding foreign trust” or “NWT” has the meaning set forth in § 1.1471-1(b)(87).

**.56 Offshore obligation.** “Offshore obligation” has the meaning set forth in § 1.1471-1(b)(88).

**.57 Owner-documented FFI.** “Owner-documented FFI” has the meaning set forth in § 1.1471-1(b)(90).

**.58 Participating FFI.** “Participating FFI” means an FFI, or branch of an FFI, that has registered with the IRS to comply with the terms of, and to enter into, this

agreement with the IRS, and to obtain a GIIN. See also the definition of reporting Model 2 FFI.

**.59 Passive NFFE.** “Passive NFFE” means an NFFE other than an excepted NFFE (or, in the case of a reporting Model 2 FFI, other than an active NFFE).

**.60 Payee.** “Payee” has the meaning set forth in § 1.1471-1(b)(96).

**.61 Preexisting account.** “Preexisting account” means an account described in § 1.1471-1(b)(101).

**.62 Qualified intermediary.** “Qualified intermediary” or “QI” has the meaning set forth in § 1.1471-1(b)(107).

**.63 Recalcitrant account holder.** “Recalcitrant account holder” has the meaning set forth in § 1.1471-1(b)(110).

**.64 Registered deemed-compliant FFI.** “Registered deemed-compliant FFI” means an FFI described in § 1.1471-5(f)(1), and includes a reporting Model 1 FFI, a QI branch of a U.S. financial institution that is a reporting Model 1 FFI, and a nonreporting FFI treated as a registered deemed-compliant FFI under a Model 2 IGA.

**.65 Reporting Model 1 FFI.** “Reporting Model 1 FFI” means an FFI or branch of an FFI that is treated as a reporting financial institution under an applicable Model 1 IGA and that has registered with the IRS to obtain a GIIN.

**.66 Reporting Model 2 FFI.** “Reporting Model 2 FFI” means an FFI or branch of an FFI that is treated as a reporting financial institution under an applicable Model 2 IGA and that has registered with the IRS to comply with the terms of this agreement, as modified by an applicable Model 2 IGA, and to obtain a GIIN.

**.67 Reportable payment.** “Reportable payment” has the meaning set forth in § 1.1471-1(b)(113).

**.68 Responsible officer.** “Responsible officer” has the meaning set forth in § 1.1471-1(b)(115).

**.69 Specified insurance company.** “Specified insurance company” has the meaning set forth in § 1.1471-1(b)(118).

**.70 Territory FI.** “Territory FI” or “territory financial institution” has the meaning set forth in § 1.1471-1(b)(129).

**.71 U.S. account.** “U.S. account” has the meaning set forth in § 1.1471-1(b)(133).

**.72 U.S. branch treated as a U.S. person.** “U.S. branch treated as a U.S. person” has the meaning set forth in § 1.1471–1(b)(134).

**.73 U.S. payor.** “U.S. payor” has the meaning set forth in § 1.1471–1(b)(139).

**.74 U.S. source FDAP income.** “U.S. source FDAP income” has the meaning set forth in § 1.1471–1(b)(141).

**.75 Withholdable payment.** “Withholdable payment” has the meaning set forth in § 1.1471–1(b)(144).

**.76 Withholding agent.** “Withholding agent” has the meaning set forth in § 1.1471–1(b)(146).

**.77 Withholding foreign partnership (WP).** “Withholding foreign partnership” or “WP” has the meaning set forth in § 1.1471–1(b)(148).

**.78 Withholding foreign trust (WT).** “Withholding foreign trust” or “WT” has the meaning set forth in § 1.1471–1(b)(150).

### **SECTION 3. DUE DILIGENCE REQUIREMENTS FOR DOCUMENTATION AND IDENTIFICATION OF ACCOUNT HOLDERS AND NONPARTICIPATING FFI PAYEES**

**.01 In General.** The due diligence procedures described in this section 3 generally apply to a participating FFI (other than a U.S. branch treated as a U.S. person). The participating FFI must perform the due diligence procedures described in this section 3 to determine which of the accounts that it maintains are (i) U.S. accounts, (ii) accounts held by recalcitrant account holders, (iii) accounts held by nonparticipating FFIs, or (iv) non-U.S. accounts. A participating FFI that makes a withholdable payment to a payee other than an account holder must also perform due diligence procedures described in this section 3 to determine if withholding is required under section 4 of this agreement.

**(A) Reporting Model 2 FFIs.** A reporting Model 2 FFI must apply the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to all accounts that such reporting Model 2 FFI maintains within the Model 2 IGA jurisdiction unless the reporting Model 2 FFI elects to apply the due diligence procedures of this agreement, as

described in this section 3. A reporting Model 2 FFI may apply the due diligence procedures described in section 3.02 of this agreement separately for each section of Annex I (for example, preexisting entity accounts) with respect to all accounts or with respect to any clearly identified group of accounts (such as by line of business or the location where the account is maintained). Except for the two year period following the date that an applicable Model 2 IGA has been signed, a reporting Model 2 FFI that applies the due diligence procedures of section 3.02 of this agreement with respect to certain accounts must continue to apply these procedures consistently to these accounts in all subsequent years unless there has been a material modification to section 3.02 of this agreement or § 1.1471–4(c). With respect to the two year period beginning on the date that an applicable Model 2 IGA has been signed, a reporting Model 2 FFI may apply either the due diligence procedures described in section 3.02 of this agreement or those described in Annex 1 of the applicable Model 2 IGA with respect to any clearly identified group of accounts, without being bound to a particular set of due diligence rules, so long as the application does not frustrate the purpose of the Model 2 IGA. A reporting Model 2 FFI must apply the due diligence procedures of section 3.02(B) of this agreement with respect to an entity payee that is receiving a withholdable payment.

**(B) U.S. Branch of a Participating FFI treated as a U.S. Person.** A U.S. branch of a participating FFI that is treated as a U.S. person (as described in § 1.1471–1(b)(134)) is required to apply the due diligence requirements described in § 1.1471–3 to determine the chapter 4 status of account holders and entity payees and must apply the due diligence requirements of chapter 3 or chapter 61 (as applicable) with respect to individual account holders. See section 4.02(C) of this agreement for special withholding rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

#### **.02 Due Diligence Procedures**

**(A) Identification and Documentation of Account Holders.** A participating FFI is required to determine the chapter 4 status of each holder of an account main-

tained by the participating FFI and to identify each account that is a U.S. account, non-U.S. account, account held by a recalcitrant account holder, or account held by a nonparticipating FFI. For this purpose, the participating FFI is required to apply the due diligence procedures for accounts to the extent, and in the manner, required under § 1.1471–4(c) within the applicable time periods described in § 1.1471–4(c)(3), (c)(4), and (c)(5). A participating FFI that is unable to reliably associate valid documentation with an account holder to determine the chapter 4 status of such account holder under such required procedures must apply the presumption rules of section 3.04 of this agreement. See also § 1.1471–4(d)(2) for other account holders to which a participating FFI’s due diligence requirements apply (e.g., account holders of a territory FI, sponsored FFI, or owner-documented FFI).

#### **(B) Identification and Documentation of Certain Payees other than Account Holders.**

For determining when withholding is required under section 4 of this agreement, a participating FFI is, prior to payment, required to reliably associate the payment with documentation that meets the requirements of section 3.03(B) of this agreement when making a withholdable payment to an entity payee. If an account holder receives a withholdable payment and is not treated as the payee of the payment, in addition to documenting the chapter 4 status of the account holder, the participating FFI is also required to establish the chapter 4 status of the payee or payees to determine whether withholding is required under section 4 of this agreement. See, however, § 1.1471–3(e)(4)(vi) for when a participating FFI may rely on the chapter 4 status of a payee provided by another participating FFI or registered deemed-compliant FFI that is acting as an intermediary or that is a flow-through entity with respect to the payee. Except as otherwise provided in section 4.02(A) of this agreement, a participating FFI must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee if, prior to the time of payment, it cannot reliably associate the payment with documentation meeting the requirements of section 3.03(B) of this agreement. See, however, § 1.1471–3(c)(7) for requirements that apply for documenta-

tion received after the date of a payment. With respect to a preexisting account, a participating FFI must, to the extent required under § 1.1471-4(c), determine the chapter 4 status of the payee within the applicable time period described in § 1.1471-4(c)(3) or, if unable to do so, must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee.

### **.03 Additional Requirements for Identification and Documentation of Account Holders and Payees**

**(A) In General.** To the extent that the participating FFI is required to retain a record of the documentation collected (or otherwise maintained) to establish the chapter 4 status of an account holder or payee, the participating FFI must do so in accordance with the requirements of § 1.1471-4(c)(2). The participating FFI must also institute procedures that meet the requirements of § 1.1471-4(c)(2) to ensure that any change in circumstances (described in section 2 of this agreement) is identified with respect to an account.

#### **(B) Requirements for Documentation**

**(1) In General.** To the extent the participating FFI obtains withholding certificates, substitute certification forms, written statements, or documentary evidence to document an account holder or payee, such documentation must meet the requirements set forth in § 1.1471-3(c). Sections 1.1471-3(c)(3) through (5) provide the requirements of valid withholding certificates, written statements, and documentary evidence. Section 1.1471-3(c)(6) provides other applicable rules for withholding certificates, written statements, and documentary evidence, including their periods of validity and electronic transmission requirements. Sections 1.1471-3(c)(8) and (9) provide requirements related to the sharing of documentation and reliance by a participating FFI on documentation collected by another person. A participating FFI must obtain the documentation specified in § 1.1471-3(d) to establish the chapter 4 status of an entity account holder or an entity payee. A participating FFI may rely on documentation that meets the requirements of § 1.1471-3(c) until the earlier of the expiration date of such documentation or the date there is a

change in circumstances that affects the account holder or payee's claim of chapter 4 status. If the participating FFI is unable to obtain the required documentation within 90 days of a change in circumstances, the participating FFI must apply the presumption rules of section 3.04 of this agreement with respect to the account or payee until valid documentation is obtained upon which the FFI is permitted to rely.

**(2) Requirements for Reporting Model 2 FFIs.** To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to an account, such documentation must meet the requirements described in the applicable Model 2 IGA, and the reporting Model 2 FFI may rely on such documentation until the earlier of the expiration date of such documentation or the date there is a change in circumstances that affects the account holder or payee's claim of chapter 4 status. Upon the expiration of the documentation or a change in circumstances, the reporting Model 2 FFI must obtain new or additional documentation or must redetermine the status of the account in accordance with the due diligence procedures described in Annex I of the applicable Model 2 IGA. If an account holder of a new account (as defined in the applicable Model 2 IGA) has a change in circumstances that would cause such account to be treated as a U.S. account and the account holder refuses to provide consent for such account to be reported, the reporting Model 2 FFI must report the account as a non-consenting U.S. account as described in section 6.03(B) of this agreement.

**.04 Presumption Rules in Absence of Valid Documentation.** If the participating FFI is required to, but is unable to, obtain documentation (or a record of documentation) that meets the requirements of this section 3 within the applicable time period described in section 3.02 of this agreement, or if the participating FFI knows or has reason to know that documentation provided for an account holder or payee is unreliable or incorrect, as determined applying the standards of knowledge described in § 1.1471-4(c)(2), or as determined under Annex I of the applicable Model 2 IGA in the case of a reporting

Model 2 FFI that applies such procedures with respect to an account, the FFI is required to apply the presumption rules described in this section 3.04 until valid documentation is provided for the account holder or payee upon which the FFI is permitted to rely. However, following a change in circumstances, a participating FFI may continue to treat otherwise valid documentation previously provided by an account holder or payee as valid and rely on such documentation until the earlier of 90 days following the change in circumstances or the date new documentation is obtained upon which the participating FFI may rely to document the chapter 4 status of the account holder or payee. See, however, § 1.1441-1(e)(4)(ii)(D) for requirements when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441-1(b)(3)(iv), to the extent a withholdable payment that is also a reportable amount (as defined in § 1.1441-1(c)(22)) is made to the account holder or payee.

**(A) Entity Payee or Account Held by an Entity.** With respect to a withholdable payment made to an entity payee, a participating FFI must apply the presumption rules of § 1.1471-3(f). The presumption rules of § 1.1471-3(f) also apply to an account held by an entity. However, in the case of an account held by a passive NFFE that provides the documentation described in § 1.1471-3(d)(12) to establish its status as a passive NFFE but fails to provide the information regarding its owners required under § 1.1471-3(d)(12)(iii), the participating FFI must treat the account as held by a recalcitrant account holder in accordance with § 1.1471-5(g)(2)(iv).

**(B) Account Held by an Individual.** With respect to an account held by an individual, a participating FFI must treat the account as held by a recalcitrant account holder in accordance with § 1.1471-5(g) and classify the type of recalcitrant account holder in accordance with the pools described in § 1.1471-4(d)(6).

**(C) Presumption Rules for Reporting Model 2 FFIs.** To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA, such FFI must apply the procedures of Annex I of the applicable Model 2 IGA to treat the account as held by a nonparticipating FFI or

non-consenting U.S. account. A reporting Model 2 FFI that applies the due diligence procedures described in section 3.02 of this agreement with respect to an account must treat an account that would otherwise be treated as held by a recalcitrant account holder as a non-consenting U.S. account to the extent required under the applicable Model 2 IGA. With respect to a withholdable payment made to an entity payee, a reporting Model 2 FFI must apply the presumption rules of § 1.1471-3(f).

## **SECTION 4. WITHHOLDING REQUIREMENTS**

**.01 Withholding Requirements. (A) In General.** A participating FFI is generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to an account maintained by such participating FFI that is held by a recalcitrant account holder or a nonparticipating FFI. A participating FFI is also generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to a payee that is (or is presumed to be) a nonparticipating FFI with respect to an offshore obligation that is not an account. There is no requirement to withhold on foreign passthru payments for payments made before January 1, 2017 and therefore this requirement is not addressed in this agreement. See section 7.03 of this agreement for the requirements of a participating FFI that is prohibited by law from withholding as required under this section 4.01.

**(B) Modification of Withholding Requirements for a Reporting Model 2 FFI.** Notwithstanding the withholding requirements described in section 4.01(A) of this agreement, a reporting Model 2 FFI is not required to deduct and withhold tax on any withholdable payment made to its non-consenting U.S. accounts, provided that the conditions under the applicable Model 2 IGA regarding the suspension of withholding relating to non-consenting U.S. accounts are met. If such conditions are not met, the reporting Model 2 FFI is required to treat its non-consenting U.S. accounts as held by recalcitrant account holders and is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to such accounts in accordance with section 4.02 of

this agreement. In addition, a reporting Model 2 FFI is required to withhold in accordance with section 4.02 of this agreement on any withholdable payment made to a nonparticipating FFI that is an account holder or a payee other than an account holder.

**(C) Special Withholding Requirements of U.S. Branch of a Participating FFI treated as a U.S. Person.** A U.S. branch of a participating FFI that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts it maintains that are held by U.S. non-exempt recipients (or presumed U.S. non-exempt recipients) will be treated as satisfying its withholding requirements under this section 4 and § 1.1471-4(b) with respect to such account holders. For all other payees of a withholdable payment, a U.S. branch of a participating FFI must withhold to the extent required under sections 1471(a) and 1472. See section 3.01(B) of this agreement for special due diligence rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

**(D) Election to Withhold under Section 3406 on Recalcitrant Account Holders.** With respect to recalcitrant account holders that receive a withholdable payment and that are subject to backup withholding under section 3406, a participating FFI (including a U.S. branch of a participating FFI that is not treated as a U.S. person) may elect to satisfy its withholding obligation under this section 4 and § 1.1471-4(b) by applying backup withholding under section 3406 to such withholdable payments. Nothing in this section 4 or § 1.1471-4(b) relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not withholdable payments (e.g., payments with respect to grandfathered obligations). See section 4.04(D) of this agreement for the coordination of backup withholding under section 3406 for a participating FFI that does not make the election described in this section 4.01(D) and that withholds under section 1471(b) with respect to a withholdable payment that is also a reportable payment made to a recalcitrant account holder that is subject to backup withholding under section 3406.

**.02 General Rules for Withholding.**

**(A) Withholding Determination in General.** A participating FFI that makes a withholdable payment is required to determine whether withholding under this section 4 applies at the time the withholdable payment is made by applying the requirements of § 1.1471-4(b) to determine the payee of the payment and to reliably associate the payment with valid documentation to establish the payee's chapter 4 status. The exceptions to withholding described in § 1.1471-2, including the exceptions for payments made under a grandfathered obligation and payments made to certain excepted accounts, apply for purposes of determining whether withholding is required under this section 4. A participating FFI is not required to withhold under this section 4 on payments made to an account holder of a preexisting account prior to the expiration of the applicable time period described in section 3.02(A) of this agreement for identifying the account (or applying the presumption rules), unless the account is documented as held by a nonparticipating FFI.

**(B) Withholding Requirements for a Participating FFI that is an NQI, NWP, or NWT.** A participating FFI that is an NQI, NWP, or NWT is generally not required to withhold with respect to a withholdable payment of U.S. source FDAP income that it receives as an intermediary, provided that it provides its withholding agent with an FFI withholding statement with sufficient information for such withholding agent to establish the portion of the payment (if any) that is allocable to recalcitrant account holders (in each of the chapter 4 withholding rate pools described in section 9.02(B) of this agreement), to payees that are nonparticipating FFIs, and to payees that are U.S. persons (U.S. payee pool) in accordance with § 1.1471-4(b)(3). If a participating FFI elects to backup withhold under section 3406 with respect to recalcitrant account holders as described in section 4.01(D) of this agreement, the participating FFI must provide its withholding agent with an FFI withholding statement with sufficient information for such withholding agent to establish the portion of the payment allocable to such account holders in accordance with § 1.6049-4(c)(4)(iii) and to apply backup withholding. See § 1.1471-

3(c)(iii) and section 9 of this agreement for the requirements applicable to a participating FFI's withholding certificate, withholding statement, and associated documentation. If the withholdable payment is exempt from chapter 4 withholding, the information provided by the participating FFI to the withholding agent must also include the payee's chapter 4 status when specific payee information is required for purposes of chapter 3. A participating FFI must also provide the withholding agent with information regarding any account holders or payees of an intermediary or flow-through entity that hold an account with the participating FFI, other than a QI, WP, or WT.

A participating FFI is required to withhold under § 1.1471-4(b)(3) when it fails to provide sufficient information to its withholding agent or when it knows or has reason to know that the withholding agent has not withheld to the extent required under § 1.1471-2(a)(i) with respect to its account holders. For example, if a participating FFI provides the documentation described in § 1.1471-3(c)(3)(iii) to its withholding agent and, based on the amount of the payment that it receives from the withholding agent, it knows or has reason to know that the withholding agent has underwithheld on the payment, it is required to deduct and withhold tax from the payment to the extent of the underwithheld tax. A participating FFI is also required to withhold when it applies the dormant account procedures described in section 5.02 of this agreement.

**(C) Withholding Requirements with Respect to Limited Branches and Limited FFIs.** A participating FFI is required to withhold on a withholdable payment it makes to, or receives on behalf of, a limited branch or limited FFI to the extent required under § 1.1471-4(b)(5), including when a participating FFI has reason to know that a withholdable payment was made to a limited branch of a participating FFI or registered deemed-compliant FFI. A participating FFI making a withholdable payment to another participating FFI on to a registered deemed-compliant FFI will have reason to know that a withholdable payment is made to a limited branch of such other FFI when the participating FFI is directed to make the payment to an address of such other FFI in a jurisdiction

other than that of the participating FFI or registered deemed-compliant FFI (or branch of such FFI) that is identified as the FFI (or branch of such FFI) that is supposed to receive the payment. For example, if a participating FFI identifies Branch A, located in Jurisdiction A, as its branch to receive withholdable payments on a withholding certificate described in § 1.1471-3(e)(3)(ii), but subsequently directs the participating FFI to which the withholding certificate was provided to make the payment to an address of the FFI in Jurisdiction B, then the participating FFI making the withholdable payment will have reason to know that the payment is made to a limited branch, unless the participating FFI making the withholdable payment obtains documentation that allows it to treat the payment made to the address in Jurisdiction B as made to a payee that is a participating FFI or deemed-compliant FFI. See § 1.1471-3(e)(3)(i).

**.03 Liability for Failure to Withhold.** A participating FFI that fails to withhold any tax under chapter 4 as required under section 4.02 of this agreement is liable for the amount of tax not withheld and any interest, additions to tax, and penalties that may apply under a relevant provision of the Code.

#### **.04 Coordination with Other Withholding Provisions**

**(A) In General.** A participating FFI is a withholding agent for purposes of chapter 4, a withholding agent under chapter 3 with respect to a payment subject to withholding under § 1.1441-2(a) or under sections 1445 or 1446, and a payor for purposes of withholding under section 3406. Except to the extent provided in this section 4.04, no provision of this agreement otherwise limits the requirement of a participating FFI to withhold as a withholding agent for purposes of chapters 3 and 4 or as a payor for purposes of backup withholding under section 3406 to the extent required.

**(B) Coordination of Withholding under Sections 1471(a) and 1472(a).** A participating FFI that complies with the withholding requirements of this agreement is deemed to satisfy its chapter 4 withholding obligations under sections 1471(a) and 1472(a) with respect to its account holders and entity payees.

**(C) Coordination with Withholding under Chapter 3.** In the case of a with-

holdable payment that is also subject to withholding under section 1441, 1442, or 1443, a participating FFI may credit the tax withheld under section 4.02 of this agreement against its liability under section 1441, 1442, or 1443 as described in § 1.1474-6(b). In the case of a withholdable payment that is also subject to withholding under section 1445, withholding under section 1445 applies to the payment to the extent described under § 1.1474-4(6)(c), and withholding is not required under section 4.02 of this agreement. In the case of a withholdable payment that is also subject to withholding under section 1446, withholding under section 1446 applies to the extent described under § 1.1474-6(d), and withholding is not required under section 4.02 of this agreement.

**(D) Coordination with Backup Withholding.** In the case of a withholdable payment that is also a reportable payment made by the participating FFI to a recalcitrant account holder, withholding under section 3406 will not apply to the reportable payment if tax is withheld on the payment under section 4.02 of this agreement, unless the participating FFI elects to apply backup withholding under section 3406 to recalcitrant account holders as described in section 4.01(D) of this agreement.

## **SECTION 5. DEPOSIT REQUIREMENTS**

**.01 In General.** A participating FFI that withholds tax as required under this agreement must deposit amounts withheld within the time period provided in § 1.1474-1(b)(1) or, for amounts withheld under the election described in section 4.01 (D) of this agreement, § 31.6302-4. See § 1.1471-2(a)(5)(ii) for an optional escrow procedure when a withholding agent is unable to determine at the time of payment whether such payment is a withholdable payment.

**.02 Dormant Accounts.** If a participating FFI receives a withholdable payment not otherwise subject to backup withholding under section 3406, or withholding under chapter 3, on behalf of a dormant account held by a recalcitrant account holder, the participating FFI may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. The tax withheld in escrow becomes due on the date that is the earlier

of 90 days or the end of the calendar year following the date that the account ceases to be a dormant account. A participating FFI that maintains a dormant account of a recalcitrant account holder and that elects to escrow withheld tax pursuant to this section 5.02 may not delegate the responsibility to escrow withheld tax to the withholding agent from which it receives the payment. See section 6.05(C) of this agreement for the reporting requirements and section 9 of this agreement for the requirements of an FFI withholding statement when the participating FFI applies the escrow rule for dormant accounts described in this section 5.02. Sections 1.1471-4(d)(6)(ii) and (iii) provide the rules for determining when the participating FFI must treat an account as dormant and when an account will no longer be treated as a dormant account.

## **SECTION 6. INFORMATION REPORTING AND TAX RETURN OBLIGATIONS**

**.01 In General.** Under section 1471(c) and § 1.1471-4(d), a participating FFI is required to report annually certain specific payee information with respect to U.S. accounts that it maintains. A participating FFI is also required to report certain aggregate account information described in section 6.03 of this agreement with respect to its recalcitrant account holders classified in accordance with the pools described in § 1.1471-4(d)(6) and, in the case of a reporting Model 2 FFI, its non-consenting U.S. accounts classified in accordance with the pools described in § 1.1471-4(d)(6). A participating FFI has a transitional reporting obligation for payments of foreign reportable amounts made to account holders that are nonparticipating FFIs as described in section 6.04 of this agreement. A participating FFI may also be required under section 6.05 of this agreement to report certain aggregate information with respect to chapter 4 reportable amounts paid to its recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons. If a participating FFI is required to file information returns under section 6.05 of this agreement, the participating FFI is also required under 6.06(A) of this agreement to file Form 1042 to report chapter 4 reportable amounts and any tax withheld on such amounts. A

participating FFI must file information returns about its account holders or payees for purposes of chapter 4 (Forms 8966, 1099, 1042-S) on magnetic media (as defined in § 301.1474-1(d)(1)). See section 6.06(B) of this agreement for the income tax return filing requirements of a U.S. branch of a participating FFI that makes withholdable payments. See also section 7 of this agreement for the requirements of a participating FFI that is prohibited by law from reporting its U.S. accounts as required under this section 6. In the case of a reporting Model 2 FFI, in applying this section with respect to a passive NFFE, the term “substantial U.S. owner” means a “controlling person” as defined in the applicable Model 2 IGA that is identified as a specified U.S. person.

### **.02 U.S. Account Reporting**

#### **(A) Accounts for which Reporting is Required**

**(1) In General.** On a calendar-year basis, a participating FFI must report each U.S. account that it maintains in the manner described in section 6.02(B) of this agreement. The participating FFI is also required to report accounts held by an FFI that it has agreed to treat as an owner-documented FFI under § 1.1471-3(d)(6) to the extent required under this section 6.02.

**(2) Special Reporting of Account Holders of Territory FIs.** If a participating FFI maintains an account held by a territory FI that acts as an intermediary with respect to a withholdable payment, and the territory FI does not agree to be treated as a U.S. person with respect to the payment, the participating FFI is required to report each specified U.S. person and each substantial U.S. owner of an entity treated as a passive NFFE with respect to which the territory FI acts as an intermediary to the extent that the territory FI provides the participating FFI with sufficient information to report such account. See § 1.1471-4(d)(2)(ii)(B)(2) for the information required to be reported for an account or payee of a territory FI.

**(3) Additional U.S. Account Reporting Requirement for a Trustee of a Trustee-Documented Trust.** In addition to the accounts required to be reported under section 6.02(A)(1) of this agreement, a participating FFI that is the trustee of a trustee-documented trust (as defined in an applicable Model 1 or Model 2 IGA)

must report each U.S. account maintained by the trust as if the participating FFI maintained the account.

**(B) General Reporting Requirements of a Participating FFI (other than its U.S. Branch treated as a U.S. Person).** A participating FFI (other than its U.S. branch treated as a U.S. person) may report its U.S. accounts on Form 8966 in the manner described in § 1.1471-4(d)(3). Alternatively, to the extent allowed under § 1.1471-4(d)(5), a participating FFI may elect to perform chapter 61 reporting as modified in section 6.02(B)(1) of this agreement, in lieu of reporting in the manner described in § 1.1471-4(d)(3). A participating FFI may elect to perform chapter 61 reporting with respect to all its U.S. accounts or with respect to any clearly identified group of U.S. accounts (such as by line of business or the location where the account is maintained) in the manner described in section 6.02(B)(1) of this agreement. With respect to a cash value insurance contract or annuity contract held by a specified U.S. person, a participating FFI may also elect to report under section 6047(d) in the manner described in § 1.1471-4(d)(5)(i)(B).

#### **(1) Modified Chapter 61 Reporting.**

A participating FFI (including a U.S. branch that is not treated as a U.S. person) that elects to perform chapter 61 reporting must report the information otherwise required to be reported under sections 6041, 6042, 6045, and 6049 and must report payments made to an account subject to reporting under the applicable section. A participating FFI that is a non-U.S. payor, however, must determine the payments subject to reporting under the applicable section as if it were a U.S. payor.

A participating FFI that elects to perform chapter 61 reporting must treat each account holder that is a specified U.S. person, U.S.-owned foreign entity, or owner-documented FFI as if it were an account holder who is an individual and citizen of the United States and must report each such account regardless of whether the account holder of such account qualifies as an exempt recipient. With respect to each account holder of a U.S. account that is a specified U.S. person, the participating FFI must report on the appropriate Form 1099 the information described in § 1.1471-4(d)(5)(ii) and

the accompanying instructions to the form. With respect to an account held by an entity treated as a passive NFFE with substantial U.S. owners or held by an owner-documented FFI with specified U.S. persons identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2), the participating FFI must report on Form 8966 the U.S. owner information described in § 1.1471-4(d)(5)(ii) and (iii) and the accompanying instructions to the form.

A participating FFI that reports an account under this section 6.02(B)(1) must report such account for the calendar year regardless of whether the participating FFI makes a reportable payment to the account during the calendar year. In such a case and with respect to a specified U.S. person, the appropriate form is Form 1099-MISC, *Miscellaneous Income*. For example, with respect to a custodial account, the participating FFI is required to file a Form 1099-MISC even if no reportable payments were paid or credited to the account with respect to any financial instrument, investment, or contract held in such account. A participating FFI that reports accounts under this section 6.02(B)(1) may decide at a later time to report the accounts in the manner described in § 1.1471-4(d)(3) beginning on the first reporting date for the calendar year following the calendar year for which it last reports an account under this section 6.02(B)(1).

**(2) Transitional Reporting Rules.** For calendar years 2014 and 2015, a participating FFI that reports under § 1.1471-4(d)(3) is only required to report the account information specified in § 1.1471-4(d)(7)(ii) for its U.S. accounts. For calendar years 2014 and 2015, a participating FFI that reports under § 1.1471-4(d)(5) is only required to report the account information specified in § 1.1471-4(d)(7)(iii) with respect to its U.S. accounts.

**(3) Time and Manner of Filing.** The participating FFI must file Form 8966 or Form 1099 on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

**(C) Special Reporting Rules for U.S. Branches treated as U.S. Persons.** In the case of a U.S. branch of a participating FFI that is treated as a U.S. person, such branch must report under chapter 61 with respect to account holders that are U.S. non-exempt recipients (or presumed U.S. non-exempt recipients), including any account holders subject to backup withholding under section 3406, and under § 1.1474-1(i) with respect to entities treated as passive NFFEs with substantial U.S. owners and owner-documented FFIs with specified U.S. persons identified in § 1.1471-3(d)(6)(iv)(A)(1) and (2).

#### **.03 Reporting with respect to Recalcitrant Account Holders**

**(A) In General.** A participating FFI is required to report certain aggregate information regarding accounts held by recalcitrant account holders on Form 8966 and in the manner described in § 1.1471-4(d)(6). Such reporting is required regardless of whether the participating FFI makes a withholdable payment to the account during the calendar year. The participating FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

**(B) Reporting Model 2 FFIs' Reporting of Non-Consenting U.S. Accounts.** Instead of the reporting described in section 6.03(A) of this agreement, a reporting Model 2 FFI is required to report on Form 8966 certain aggregate information regarding accounts treated as non-consenting U.S. accounts classified in accordance with the pools described in § 1.1471-4(d)(6) and the accompanying instructions to the form. Such reporting is required regardless of whether the reporting Model 2 FFI makes a withholdable payment to the account during the calendar year. A reporting Model 2 FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates (unless otherwise specified in the applicable Model 2 IGA) in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

**.04 Special Transitional Reporting of Payments to Nonparticipating FFIs.** For calendar years 2015 and 2016, the participating FFI must report on a specific payee basis on Form 8966 the aggregate amount of foreign reportable amounts paid with respect to an account held by a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI) that the participating FFI maintains. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the account holder and the participating FFI has not obtained such consent (i.e., the account holder is a non-consenting nonparticipating FFI), the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid to such non-consenting nonparticipating FFIs. In either case, the participating FFI may report all income, gross proceeds, and redemptions (regardless of source) paid to the nonparticipating FFI's account (or all non-consenting nonparticipating FFIs' accounts, as applicable) by the participating FFI during the calendar year instead of reporting only foreign reportable amounts. The participating FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

#### **.05 Withholdable Payment Reporting and Reporting of Tax Withheld**

**(A) In General.** Except as otherwise provided in this section 6.05(A) and section 6.05(B) of this agreement, a participating FFI is required to report on Form 1042-S chapter 4 reportable amounts made during the year to payees that are recalcitrant account holders, nonparticipating FFIs, and, with respect to a non-U.S. payor, U.S. persons that are included in a U.S. payee pool (see section 9.02). Forms 1042-S must identify the foreign branch of the FFI maintaining the payee's account using the GIIN assigned to such branch and the employer identification number (EIN) of the legal entity covered by this agreement. A U.S. branch of a participating FFI is required to file sepa-

rate Forms 1042-S using the EIN assigned to such U.S. branch to report chapter 4 reportable amounts that it paid to its account holders and payees.

**(1) Allowance for Specific Payee or Pooled Reporting.** A participating FFI may report chapter 4 reportable amounts made to a specific recipient or to a chapter 4 reporting pool to the extent permitted or required under section 6.05(A)(1)(i) of this agreement. Section 1.1474-1(d) provides additional reporting requirements for chapter 4 reportable amounts. A participating FFI that fails to file returns or furnish statements required by this agreement may be subject to penalties in accordance with sections 6721 through 6724.

**(i) Pooled Reporting.** A participating FFI may report on Form 1042-S chapter 4 reportable amounts made to recalcitrant account holders and nonparticipating FFIs in a chapter 4 reporting pool. With respect to recalcitrant account holders, a separate chapter 4 reporting pool is required for each class of recalcitrant account holders described in § 1.1471-4(d)(6). Additionally, a participating FFI that is a non-U.S. payor must report payees of U.S. accounts that it reports under section 6.02 of this agreement in a chapter 4 reporting pool of U.S. payees. Section 1.1474-1(d) provides additional reporting requirements for chapter 4 reportable amounts. See also Form 1042-S and its accompanying instructions for the chapter 4 reporting pool codes for recipients and income codes.

**(ii) Specific Recipient Reporting.** As an alternative to reporting chapter 4 reportable amounts to a chapter 4 reporting pool of recalcitrant account holders and nonparticipating FFIs as described in section 6.05(A)(1)(i) of this agreement, a participating FFI may issue a Form 1042-S to a recalcitrant account holder or a nonparticipating FFI on a specific payee basis. Section 1.1474-1(d)(1)(i) specifies the information that is required to be included on Form 1042-S. See also section 10.04 of this agreement for the limitation on filing a collective refund claim on behalf of account holders or payees that are reported on a specific payee basis.

**(2) Reporting Required when Electing to Withhold under Section 3406 on Recalcitrant Account Holders.** A participating FFI that elects to satisfy its obligation to withhold on withholdable pay-

ments with respect to recalcitrant account holders by backup withholding under section 3406 with respect such payments as described in section 4.01(D) of this agreement must report on the applicable Form 1099 the reportable payments made during the year to such persons. Forms 1099 must be filed by the legal entity covered by this agreement and must exclude payments made by its U.S. branch, if any. A U.S. branch of a participating FFI that has not agreed to be treated as a U.S. person and makes the election described in section 4.01(D) of this agreement is required to file separate Forms 1099 using the EIN assigned to such U.S. branch.

**(3) U.S. Branch of a Participating FFI.** A U.S. branch of a participating FFI (regardless of whether it is treated as a U.S. person) must report separately on Form 1042-S or 1099 with respect to amounts paid or received by the U.S. branch during the year on behalf of its account holders. A U.S. branch of a participating FFI that is not treated as a U.S. person is only required to report on Form 1042-S or Form 1099, however, to the extent described in section 6.05(B) of this agreement. See section 6.06(B) of this agreement for the requirement for a U.S. branch to file a separate Form 1042 or Form 945.

**(B) Special Reporting Rules when Withholding Agent Reports on Behalf of Participating FFI.** A participating FFI is not required to report on Form 1042-S or Form 1099 as described in section 6.05(A) of this agreement amounts that the participating FFI receives on behalf of a recalcitrant account holder, nonparticipating FFI, or chapter 4 reporting pool of payees that are U.S. persons to the extent that its withholding agent has correctly reported on a Form 1042-S or Form 1099, as the context requires, and withheld the correct amount of tax on such amounts. The participating FFI is required to report, however, when the participating FFI knows, or has reason to know, that the payment is not correctly reported on Form 1042-S or Form 1099, that less than the required amount has been withheld on the payment, or that the amount of tax withheld is not correctly reported on Form 1042-S or Form 1099. In such a case, the participating FFI must report the payment on Form 1042-S or Form 1099 to the extent required under section 6.05(A) of this agree-

ment. See section 9 of this agreement for the information that the participating FFI must include on its withholding statement to enable its withholding agent to report.

**(C) Dormant Accounts.** Notwithstanding section 6.05(B) of this agreement, a participating FFI is required to report a chapter 4 reportable amount made to a recalcitrant account holder that holds a dormant account for which the participating FFI sets aside the amount withheld in escrow, in lieu of depositing the tax withheld. See section 5.02 of this agreement for the requirements of the escrow procedure for dormant accounts. See also section 9 of this agreement for the withholding statement requirements with respect to dormant accounts and the instructions to Form 1042-S for reporting under this procedure.

**(D) U.S. Source FDAP Income Subject to Reporting under Chapter 3.** In a case in which a participating FFI reports under section 6.05(A) of this agreement a withholdable payment of U.S. source FDAP income subject to withholding under section 4 of this agreement, a separate Form 1042-S is not required to be filed for the same payment for chapter 3 reporting purposes under § 1.1461-1(c)(2). A participating FFI that is reporting U.S. source FDAP income that is a chapter 4 reportable amount that is not subject to withholding under section 4 of this agreement must include in its reporting an exemption code for chapter 4 purposes to the extent the participating FFI is required to report the amount under § 1.1461-1(c)(2).

**(E) Reporting of Withholdable Payments to Limited Branches and Limited FFIs.** A participating FFI must report (or provide sufficient information to its withholding agent, as described in section 6.05(B) of this agreement, to report) withholdable payments that it receives on behalf of a limited branch or limited FFI. See section 4.02(C) of this agreement for the withholding requirements of a participating FFI with respect to payments made to a limited branch or limited FFI. See Form 1042-S and its accompanying instructions for the other information that a participating FFI is required to report in such a case.

**(F) Time and Manner of Filing.** A participating FFI must file Forms 1042-S on magnetic media with the IRS on or before March 15 of the year following the end of the calendar year to which the form

relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions. A participating FFI must file the relevant Forms 1099, if applicable, on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

#### **.06 Tax Return Filing Requirements**

**(A) In General.** If a participating FFI is required to report on Form 1042-S chapter 4 reportable amounts, it must also file an income tax return on Form 1042 to report the chapter 4 reportable amounts paid to account holders and payees that the participating FFI is required to report on Form 1042-S. A participating FFI will also be required to report on Form 1042 the amount of tax withheld and the amount of tax deposited with respect to such payments for the calendar year, in addition to any other information required by the form and its accompanying instructions. If a participating FFI applies backup withholding, instead of withholding under chapter 4, with respect to recalcitrant account holders as described in section 4.01(D) of this agreement, the participating FFI must also file an income tax return on Form 945 to the extent the participating FFI withheld tax on withholdable payments that are reportable amounts paid to its account holders. See section 6.05(B) of this agreement for the rules on when Form 1042-S and Form 1099 are required to be filed.

Form 1042 or Form 945 must be filed by the legal entity covered by this agreement, and it must exclude payments made by any U.S. branch of such entity. Withholding certificates and other statements or information provided to the participating FFI should not be attached to the return. With respect to Form 1042, the information required for purposes of chapter 4 is in addition to the information required to be provided on Form 1042 for purposes of chapter 3. A participating FFI must file Form 1042 with the IRS on or before March 15 of the year following the calendar year to which the form relates. A participating FFI must file Form 945 with the IRS on or before January 31 of the year following the calendar year to which the form relates.

**(B) U.S. Branch of a Participating FFI.** A U.S. branch of a participating FFI that is required to report on Form 1042-S chapter 4 reportable amounts must file a separate Form 1042 to report the chapter 4 reportable amounts that it paid to account holders and payees. Form 1042 should include the information described in section 6.06(A) of this agreement. A U.S. branch of a participating FFI that is treated as a U.S. person may also be required to file an income tax return on Form 945 if such branch applied backup withholding under section 3406(a) with respect to reportable amounts paid to accounts held by U.S. non-exempt recipients. See section 4.02(C) of this agreement for the withholding requirements of a U.S. branch of a participating FFI that is treated as a U.S. person.

**.07 Coordination with Chapter 61 Reporting.** A non-U.S. payor that is a participating FFI will satisfy its reporting obligations under chapter 61 (Form 1099 reporting) with respect to a payment to a payee that is a U.S. non-exempt recipient (or presumed U.S. non-exempt recipient) if such participating FFI reports such an account holder pursuant to sections 6.02 and 6.03. See also § 1.6049-4(c)(4) (including when a reporting Model 2 FFI will satisfy its obligation to report under chapter 61 with respect to a reportable payment). Notwithstanding the first sentence of this section 6.07, a participating FFI is required to report on Form 1099 to the extent the participating FFI applies backup withholding under section 3406 to the payment. See § 1.6049-4(b)(6) for how a participating FFI may report a payment under chapter 61 to which backup withholding applies.

#### **.08 Retention Requirements**

**(A) Account Statements.** A participating FFI is required to retain information that summarizes the account activity of its U.S. accounts and accounts held by recalcitrant account holders and nonparticipating FFIs to the extent required in § 1.1471-4(d).

**(B) Forms 1042-S.** A participating FFI must retain a copy of each Form 1042-S for the period of limitations on assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042-S relates.

## **SECTION 7. LEGAL PROHIBITIONS ON REPORTING U.S. ACCOUNTS AND ON WITHHOLDING**

**.01 In General.** If a participating FFI (or branch thereof) is prohibited by law from reporting its U.S. accounts as required under section 6.02 of this agreement or from withholding to the extent required under section 4 of this agreement, the participating FFI (or branch thereof) must comply with the requirements of section 7.02 or 7.03 of this agreement.

**.02 Prohibitions on Reporting U.S. Accounts.** A participating FFI that is prohibited under the laws of the jurisdiction in which it is resident, established, or located from reporting a U.S. account as required under section 6.02 of this agreement must satisfy the requirements of § 1.1471-4(i)(2) to request a valid and effective waiver of such law or otherwise close or transfer the account.

**(A) Reporting Model 2 FFI.** A reporting Model 2 FFI that is prohibited under the laws of the jurisdiction in which it is resident, established, or located from reporting a preexisting U.S. account as required under section 6.02 of this agreement must request consent to report such account and, if consent is not provided, must report certain aggregate information about such account with other non-consenting U.S. accounts in accordance with section 6.03 of this agreement. With respect to a new account (as defined in the applicable Model 2 IGA), a reporting Model 2 FFI must obtain from each account holder of a U.S. account, as a condition of account opening, the consent required under domestic law in order for such reporting Model 2 FFI to report the account as required under section 6.02 of this agreement. Additionally, a reporting Model 2 FFI must request the account holder's consent to report, if required by domestic law, after account opening for any new account that is not identified as a U.S. account at account opening and that must subsequently be treated as a U.S. account due to a change in circumstances. If consent is not provided by the account holder, the reporting Model 2 FFI must treat the account as a non-consenting U.S. account and report the account as de-

scribed in section 6.03(B) of this agreement.

**.03 Legal Prohibitions Preventing Withholding with Respect to Recalcitrant Account Holders and Nonparticipating FFIs.** To the extent a participating FFI is prohibited under domestic law from withholding with respect to recalcitrant account holders and nonparticipating FFIs as required under section 4 of this agreement, the participating FFI is required to satisfy the requirements of § 1.1471-4(i)(3) to block or transfer each account or offshore obligation held by such persons.

**.04 Limited Branches**

**(A) In General.** If a participating FFI maintains one or more limited branches, the participating FFI must meet the requirements described in § 1.1471-4(e)(2)(iii). Such requirements include withholding on payments made or received on behalf of a limited branch as described in section 4.03(C) of this agreement and reporting such payments as described in section 6.05(E) of this agreement. After the expiration of the transitional rule for limited branches under § 1.1471-4(e)(2)(v), a participating FFI with one or more limited branches will cease to be a participating FFI. If a limited branch maintained by a participating FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, the participating FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following the date that the branch ceases to be a limited branch by registering such branch as a participating FFI or deemed-compliant FFI by that date.

**(B) Limited Branch of a Reporting Model 2 FFI.** If a reporting Model 2 FFI maintains one or more limited branches, the reporting Model 2 FFI must comply with the requirements described in the applicable Model 2 IGA with respect to each limited branch, which includes the requirements to withhold on payments made or received on behalf of such branch as described in section 4.03(C) of this agreement and to report such payments as described in section 6.05(E) of this agreement. If a branch maintained by the FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, a reporting Model 2 FFI must notify the

IRS on the FATCA registration website by the beginning of the third calendar quarter following such date that the branch will cease to be a limited branch by registering such branch as a participating FFI or deemed-compliant FFI by that date. A reporting Model 2 FFI with one or more limited branches will continue to be a reporting Model 2 FFI after the expiration of the transitional rule for limited branches under § 1.1471-4(e)(2)(v), provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such branches.

**SECTION 8. COMPLIANCE PROCEDURES**

**.01 In General.** A participating FFI is required to adopt a compliance program under the authority of the responsible officer of the participating FFI or, in the case of a participating FFI that adopts a consolidated compliance program under the requirements of § 1.1471-4(f)(2)(ii), under the authority of the responsible officer of a compliance FI. A participating FFI's compliance program must include policies, procedures, and processes sufficient for the participating FFI to satisfy the due diligence, reporting, and withholding requirements of this agreement. A participating FFI must also perform, or have performed on its behalf, a review of its compliance with this agreement for the certification period (described in § 1.1471-4(f)(3)). The results of such review must be considered by the responsible officer in making the periodic certifications described in section 8.03 of this agreement. A participating FFI must also comply with the IRS review of compliance described in section 8.04 of this agreement.

**.02 Responsible Officer.** A participating FFI must appoint a responsible officer to establish, or to appoint one or more designees to establish, a compliance program that meets the requirements of section 8.01 of this agreement and to periodically review the sufficiency of such compliance program. The responsible officer must make the certifications described in section 8.03 of this agreement to the IRS regarding the FFI's compliance with this agreement.

**.03 Certifications of Compliance by Responsible Officer**

**(A) Certification Regarding the Due Diligence Procedures.** No later than 60 days following the date that is two years after the effective date of this agreement, the responsible officer of the participating FFI must make the certification described in § 1.1471-4(c)(7) regarding the FFI's completion of the due diligence procedures for preexisting accounts required under section 3 of this agreement and regarding the absence of any formal or informal practices or procedures to assist account holders in the avoidance of chapter 4 as described in § 1.1471-4(c)(7).

**(B) Periodic Certification of Compliance.** On or before July 1 of the calendar year following the certification period defined in § 1.1471-4(f)(3)(i), the responsible officer of the participating FFI must make either the certification of effective internal controls described in § 1.1471-4(f)(3)(ii) or, when required, make the qualified certification under § 1.1471-4(f)(3)(iii). The responsible officer must consider the results of the participating FFI's periodic review in making the periodic certification of compliance.

**(C) Method of Making Certifications.** The participating FFI (or the compliance FI with respect to such FFI) must make the certifications of compliance in such manner as the IRS may prescribe in future guidance or other instructions.

**.04 Review of Compliance**

**(A) General Inquiries of FFI and Account Holder Compliance.** Based upon the information reporting forms and tax returns (Forms 945, 1042, 1042-S, 8966, and 1099) filed with the IRS for each calendar year, the IRS may request additional information with respect to the information reported or required to be reported on such forms described in section 6.06 of this agreement or may request the account statements described in § 1.1471-4(d)(4)(v). The IRS may request additional information to determine an FFI's compliance with its FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

**(B) Inquiries of Reporting Model 2 FFIs.** In the case of a reporting Model 2 FFI, subject to the terms set forth in an applicable competent authority arrangement under the applicable Model 2 IGA, the U.S. Competent Authority may make

an inquiry directly to a reporting Model 2 FFI regarding the information described in section 8.04(A) of this agreement. When the U.S. Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting, the U.S. Competent Authority may make such an inquiry directly to a reporting Model 2 FFI. Additionally, if a reporting Model 2 FFI reports aggregate information regarding its non-consenting U.S. accounts and accounts held by non-participating FFIs as described in sections 6.03 and 6.04 of this agreement, the U.S. Competent Authority, consistent with the terms of the applicable competent authority arrangement under the applicable Model 2 IGA, may request information regarding the accounts underlying the aggregate information returns filed with respect to such accounts.

**(C) Inquiries regarding Substantial Non-Compliance.** Based on the information reporting forms and tax returns (Forms 945, 1042, 1042-S, 8966, and 1099) filed with the IRS for each calendar year, the certifications made by the responsible officer, or any other information related to a participating FFI's compliance with this agreement, the IRS may determine in its discretion that the participating FFI may not have substantially complied with the requirements of this agreement. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with this agreement or the performance of specified review procedures as described in § 1.1471-4(f)(4)(ii). If the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement, the IRS will notify the participating FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

**(D) Inquiries regarding Significant Non-Compliance for Reporting Model 2 FFIs.** Consistent with the terms of the applicable competent authority arrangement under the Model 2 IGA, the U.S. Competent Authority may request information necessary to verify a reporting Model 2 FFI's compliance with this agreement as described in § 1.1471-4(f)(4)(ii). If the U.S. Competent Author-

ity determines that a reporting Model 2 FFI has failed to significantly comply with the requirements of this agreement, as modified by the applicable Model 2 IGA, the U.S. Competent Authority will notify the Competent Authority of the jurisdiction in which the reporting Model 2 FFI is located, and will also notify the reporting Model 2 FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

## **SECTION 9. PARTICIPATING FFI WITHHOLDING CERTIFICATE**

**.01 Participating FFI Withholding Certificate.** A participating FFI agrees to furnish a valid withholding certificate to each withholding agent from which it receives a withholdable payment and to each participating FFI or deemed-compliant FFI with whom the participating FFI holds an account. When a participating FFI receives a withholdable payment as a beneficial owner of the payment (as defined in § 1.1471-1(b)(7)) or otherwise holds an obligation or account for its own benefit, the withholding certificate to be furnished is a Form W-8BEN-E (or acceptable substitute form under § 1.1471-3(c)(6)(v)) that certifies that the participating FFI is the beneficial owner and that includes the GIIN of the participating FFI in its jurisdiction of residence for tax purposes (or place of organization if the FFI has no such residence) or otherwise identifies the branch of the participating FFI that is receiving the payment and the branch's GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and all of the other information required by § 1.1471-3(c)(3)(ii), the form, and its accompanying instructions. Alternatively, with respect to a payment made prior to January 1, 2017, or made with respect to an offshore obligation, the participating FFI may provide its GIIN or other documentation as described in § 1.1471-3(d)(4)(ii) or (iii). In such a case, the participating FFI will not be subject to withholding and will not be reported as a nonparticipating FFI with respect to withholdable payments it receives from a withholding agent to whom the participating FFI provided such documentation. If, however, the branch receiving the withholdable payment is a limited branch, the participating FFI must identify itself as a nonparticipating

FFI on the Form W-8BEN-E that it provides to the withholding agent, and such payment will be subject to withholding and reporting for purposes of chapter 4. See § 1.1471-4(e)(2)(iv)(E) for rules applicable to a limited branch of a participating FFI.

When a participating FFI receives a withholdable payment of U.S. source FDAP income as an intermediary, holds an account with a participating or registered deemed-compliant FFI as an intermediary, or is a flow-through entity, the withholding certificate that the participating FFI must furnish to the withholding agent is a Form W-8IMY (or acceptable substitute form under § 1.1471-3(c)(6)(v)) that certifies that the participating FFI is a flow-through entity or is acting as an intermediary (as applicable) and that includes the GIIN of the participating FFI in its jurisdiction of residence for tax purposes (or place of organization if the FFI has no such residence) or otherwise identifies the branch of the participating FFI receiving the payment and its GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and includes all of the other information required by § 1.1471-3(c)(3)(iii), section 4.03(B) of this agreement, the form, and its accompanying instructions. Alternatively, with respect to an offshore obligation, the participating FFI (or the branch of the participating FFI receiving the payment) may provide the branch's GIIN and the documentation described in § 1.1471-3(d)(4)(iii). In such a case, the participating FFI will not be subject to withholding (or reporting) as a nonparticipating FFI for purposes of chapter 4 that would otherwise apply based on its status as a participating FFI, though withholding for purposes of chapter 4 may apply to the extent that it receives payment on behalf of recalcitrant account holders or nonparticipating FFIs and fails to provide sufficient information for its withholding agent to withhold under chapter 4 with respect to such persons. Additionally, withholding for purposes of chapter 3 may apply with respect to payments of U.S. source FDAP income based on the status of persons for whom the participating FFI receives the payment. For the requirements of a withholding certificate provided by a foreign partnership or foreign trust receiving a chap-

ter 3 reportable amount, see § 1.1441-5(c)(2) or § 1.1441-5(e)(5), respectively. For the requirements of a withholding certificate provided by a foreign intermediary that receives a chapter 3 reportable amount, see § 1.1441-1(e)(3).

#### **.02 Withholding Statement**

**(A) In General.** A participating FFI agrees to provide an FFI withholding statement that includes the information described in section 9.02(B) of this agreement to each withholding agent from which it receives a withholdable payment of U.S. source FDAP income on behalf of its account holders or other persons (including its partners, beneficiaries, or owners for a participating FFI that is a flow-through entity). See section § 1.1471-3(c)(iii)(B)(1) and (2) for the requirements of an FFI withholding statement. The withholding statement must be updated as often as necessary for the participating FFI to meet its withholding and reporting obligations under sections 4 and 6 of this agreement.

**(B) Allocation of Payment on Withholding Statement.** A participating FFI must allocate a withholdable payment of U.S. source FDAP income to each payee of the payment on its withholding statement. A participating FFI may include, however, on the withholding statement information that indicates the portion of such withholdable payment that is allocated to each of its chapter 4 withholding rate pools (consisting of separate pools for each class of recalcitrant account holders, for nonparticipating FFIs, and for U.S. payees). If a participating FFI applies the escrow procedure for dormant accounts described in section 5.02 of this agreement, the participating FFI must indicate the portion of such payment allocated to a chapter 4 withholding rate pool of recalcitrant account holders that hold dormant accounts that the participating FFI (and not the withholding agent) will hold in escrow. A participating FFI must identify its pools of recalcitrant account holders in accordance with the chapter 4 reporting pools provided on Form 1042-S and its accompanying instructions. If, however, a participating FFI elects to apply backup withholding instead of withholding under chapter 4 with respect to recalcitrant account holders that are described in section 4.01(D) of this agreement, the withholding statement provided to the withholding

agent must indicate the portion of such payment subject to backup withholding under section 3406 that is allocated to the chapter 4 withholding rate pool of such recalcitrant account holders. In the case of a participating FFI that is a non-U.S. payor, a chapter 4 withholding rate pool of U.S. payees should include only those account holders that the participating FFI reports under section 6.02 of this agreement. See § 1.6049-4(b)(6) for the information that such a participating FFI may report with respect to payments subject to backup withholding under section 3406. See Form 1042-S and its accompanying instructions for information on the chapter 4 withholding rate pools applicable to recalcitrant account holders, nonparticipating FFIs, and U.S. payees.

If any portion of a withholdable payment is attributable to payees not subject to withholding or reporting under chapter 4, but the payment is subject to withholding or reporting under chapters 3 or 61, see §§ 1.1441-1(e)(3)(iv), 1.1441-5(c)(3)(iv), and 1.6049-5(d) for the applicable requirements (including the requirements applicable to the withholding statement and the appropriate documentation to be provided with respect to each such payee). In addition to allocating the portion of the payment to each such recipient, the withholding statement must include the information necessary for the withholding agent to report the payment on Form 1042-S or Form 1099.

If a participating FFI has an account holder that is a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI), territory FI, or QI (including a QI branch of a U.S. financial institution) that is acting as an intermediary or is a flow-through entity and that has provided the information described in § 1.1471-3(c)(2) necessary for the withholding agent to report on the payment, the participating FFI must provide to its withholding agent the account holder information or pool reporting information provided to it by such other entity for determining the amount of withholding or the reporting required under chapter 4. See § 1.1471-3(e)(4)(vi)(B) providing that the participating FFI may rely on the determination of a payee's chapter 4 status that is provided by another participat-

ing FFI or registered deemed-compliant FFI unless the first-mentioned participating FFI knows or has reason to know that such information is incorrect or unreliable.

**(C) Allocation of Payment on Withholding Statement for Reporting Model 2 FFIs.** In addition to the information described in section 9.02(B) of this agreement, a withholding statement provided by a reporting Model 2 FFI must include in its chapter 4 withholding rate pool of U.S. payees any account holder of a non-consenting U.S. account that is not subject to chapter 4 withholding under an applicable Model 2 IGA (described in section 4.02(B)(2) of this agreement), but only to the extent that the payment is not subject to withholding under chapter 3 or backup withholding under section 3406.

**(D) Procedure for Specific Recipient Reporting.** For payments that are received by a participating FFI that is acting as an intermediary or that is a flow-through entity and that are subject to withholding under chapter 4 or backup withholding under section 3406 (described in section 4.01(D) of this agreement), that participating FFI may provide specific recipient information instead of chapter 4 withholding rate pool information on the withholding statement regarding any (or all) recipients that are recalcitrant account holders or nonparticipating FFIs. In such a case, the withholding statement must include the information necessary to enable the withholding agent to report the payment in accordance with the requirements described in § 1.1474-1(d) and the requirements of Form 1042-S or Form 1099 and its accompanying instructions. The participating FFI is not required to provide the withholding agent with the withholding certificate or other documentation for each recipient.

## **SECTION 10. ADJUSTMENTS FOR OVERWITHHOLDING AND UNDERWITHHOLDING AND REFUNDS**

**.01 Adjustments for Overwithholding by Withholding Agent.** A participating FFI may request a withholding agent to make an adjustment for amounts paid to the participating FFI on which the withholding agent has overwithheld (as defined in § 1.1474-2(a)(2)) under chapter 4 by applying either the reimbursement procedure or the set-off procedure described

in this section 10.01. Nothing in this section 10 requires a withholding agent to apply these procedures.

**(A) Reimbursement Procedure.** A participating FFI may request a withholding agent to repay the participating FFI for any amount overwithheld under chapter 4, and for the withholding agent to reimburse itself under the reimbursement procedures under § 1.1474-2(a)(3), by making a request to the withholding agent prior to the earlier of the due date for filing Form 1042 and Form 1042-S (without regard to extensions), or the actual filing of Form 1042-S, for the calendar year of overwithholding. In such a case, the participating FFI must provide the withholding agent with sufficient information to determine the correct amount of withholding and to correctly report the payment as required under § 1.1474-1(d)(4). See section 4.02 of this agreement for the circumstances in which a withholding agent may withhold on behalf of the participating FFI with respect to its account holders or payees.

**(B) Set-off Procedure.** A participating FFI may request a withholding agent repay the participating FFI by applying the amount overwithheld under chapter 4 against any amount which otherwise would be required to be withheld under chapter 3 or 4 from income paid by the withholding agent to the participating FFI under the set-off procedures of § 1.1474-2(a)(4). A participating FFI must make the request before the earlier of the due date for filing Form 1042-S (without regard to extensions), or the actual filing of Form 1042-S, for the calendar year of overwithholding.

**.02 Adjustments for Overwithholding by Participating FFI.** A participating FFI may make an adjustment for amounts paid to its account holders and payees for which it has overwithheld tax under chapter 4 (as defined in § 1.1474-2(a)) by applying either the reimbursement procedures or the set-off procedures described in § 1.1474-2(a)(3) or (4), respectively.

**.03 Repayment of Backup Withholding.** If a participating FFI erroneously withholds (as defined in § 31.6413(a)-3) an amount under section 3406 from an account holder or payee, such participating FFI may refund to such person the

amount erroneously withheld as provided in § 31.6413(a)-3.

**.04 Collective Credit or Refund Procedures for Overpayments.** If there has been an overpayment of tax with respect to an account holder or a payee of a participating FFI resulting from tax withheld under chapter 4 on a payment made to such account holder or payee during a calendar year, and the amount withheld has not been recovered under the reimbursement or set-off procedures described under section 10.01 or 10.02 of this agreement, the participating FFI may request a credit or refund of the amount of tax overwithheld to the extent permitted under § 1.1471-4(h). The participating FFI must follow the procedures set forth under § 1.1471-4(h)(4) to request the credit or refund on behalf of its account holders. No credit or refund will be allowed after the expiration of the statutory period of limitations for refunds under section 6511 with regard to the account holder or payee for whom the refund or credit is sought.

**.05 Adjustments for Underwithholding.** If a participating FFI knows that an amount should have been withheld under chapter 4 from a previous payment to an account holder or a payee but was not withheld, the participating FFI may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same account holder or payee or satisfy the tax from property that it holds in custody for such person or property of such person over which it has control. The additional withholding or satisfaction of the tax owed may only be made before the due date of Form 1042 (without regard to extensions) for the calendar year in which the underwithholding occurred. A participating FFI's responsibilities will be met under this section 10.05 if it informs the withholding agent from whom the participating FFI received the payment of the underwithholding, and the withholding agent satisfies the underwithholding.

**.06 Underwithholding after Form 1042 Filed.** If, after Form 1042 has been filed for a calendar year (or the due date for filing Form 1042 if no Form 1042 was filed), a participating FFI or the IRS determines that the participating FFI has underwithheld tax for such year, the participating FFI must file an amended Form 1042 (or original Form 1042 if no Form

1042 was filed) to report and pay the underwithheld tax. A participating FFI must pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties at the time of filing such amended (or original) Form 1042. If a participating FFI fails to file a return (if required under section 6.06 of this agreement or this section 10.06), the IRS will make such return under section 6020 and assess such tax under the procedures set forth in the Code.

## SECTION 11. FFI GROUP

### .01 FFI Group

**(A) In General.** Each FFI that is a member of an FFI group, other than an exempt beneficial owner, must obtain its chapter 4 status as a participating FFI, registered deemed-compliant FFI, or limited FFI as a condition for any member of such FFI group obtaining chapter 4 status as a participating FFI, registered deemed-compliant FFI, or limited FFI. In addition, the participating FFI and each FFI that is a member of the participating FFI's FFI group must comply with the requirements of a participating FFI, registered deemed-compliant FFI, or limited FFI as a condition for the participating FFI maintaining its chapter 4 status as a participating FFI. If the participating FFI is a member of an FFI group, the participating FFI will cease to be a participating FFI after the earlier of (1) the beginning of the third calendar quarter following the date that a member of the FFI group that was a limited FFI, ceases to be a limited FFI, unless the member becomes a participating or registered-deemed compliant FFI, or (2) the expiration of the transitional rule for limited FFIs and limited branches under § 1.1471-4(e)(3)(iv), unless each limited FFI in the group becomes a participating or registered deemed-compliant FFI and no member of the FFI group (including the participating FFI) maintains a limited branch. An FFI and its FFI Group may register on the FATCA registration website.

**(B) Special Rule for a Reporting Model 2 FFI.** A reporting Model 2 FFI that has a limited branch or is a member of an expanded affiliated group that includes a limited FFI or FFI member with a limited branch will not cease to be a reporting Model 2 FFI solely due to the expiration

of the transitional rule for limited branches or limited FFIs under § 1.1471-4(e)(2) or (3), respectively, provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such limited branches and limited FFIs.

**(C) Limited FFIs.** A participating FFI that is a member of an FFI group that includes one or more limited FFIs must treat such FFIs as nonparticipating FFIs for withholding and reporting purposes. See sections 4.03(C), 6.04, and 6.05(E) of this agreement for the participating FFI's requirements with respect to limited FFIs under this agreement.

#### **.02 Lead FI**

**(A) Designation of the Lead FI.** If the participating FFI designates a lead FI to initiate its FATCA registration, the participating FFI must authorize the lead FI to fulfill the responsibilities described in section 11.02(B) of this agreement.

**(B) Responsibilities of the Lead FI.** A participating FFI that is designated as the lead FI by one or more FFIs that are members of an FFI group agrees to meet the following responsibilities with respect to such FFIs in addition to its other obligations under this agreement:

**(1)** Identify itself as the lead FI as part of the registration process and to delete its status as lead FI upon termination of such status;

**(2)** Identify all FFIs that have designated the participating FFI as their lead FI as part of the participating FFI's registration process;

**(3)** Monitor the FFI group information by accessing the FATCA registration website every six months to review the information provided and, if needed, update the information provided with respect to any members of the FFI group;

**(4)** Inform the IRS within 90 days of an acquisition or sale of a member of the FFI group by updating the FFI group information on the FATCA registration website to add or delete such member;

**(5)** Inform the IRS within 90 days of a change affecting the chapter 4 status of any member of the FFI group, including when any member of the FFI group ceases to comply with (or that does not otherwise comply with) the requirements of either a participating FFI or a registered deemed-compliant FFI by updating the member

FFI's chapter 4 status on the FATCA registration website; and

**(6)** Inform the IRS within the time period prescribed under § 1.1471-4(e)(3)(iv) that a member of the FFI group ceases to be a limited FFI and designate on the FATCA registration website the status for which such FFI will register.

## **SECTION 12. EXPIRATION, MODIFICATION, TERMINATION, DEFAULT, AND RENEWAL OF THIS AGREEMENT**

**.01 Term of Agreement.** This agreement begins on its effective date and expires on December 31, 2016, unless terminated under section 12.03 of this agreement. This agreement may be renewed as provided in section 12.08 of this agreement.

**.02 Modification.** This agreement may be modified by the IRS before the expiration date indicated in section 12.01 of this agreement. This agreement will only be modified through published guidance. Any such modification will in no event become effective until the later of 120 days after the IRS issues published guidance of such modification or the beginning of the next calendar year following such published guidance. In no event will the IRS modify this agreement for any year before 2017 to expand the class of payments for which withholding or reporting is required under this agreement or to include additional requirements for a participating FFI.

**.03 Termination of Agreement.** This agreement may be terminated by either the IRS or the participating FFI prior to the end of its term by delivery of a notice of termination to the other party in accordance with section 12.06 of this agreement.

**(A) In General.** The IRS will not terminate this agreement unless there has been a significant change in circumstances (as defined in section 12.04 of this agreement) or an event of default (as defined in section 12.05 of this agreement), and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this agreement. The IRS will not terminate this agreement in the event of default if the participating FFI can establish to the satisfaction of the IRS that all events of

default for which it has received a notice (described in section 12.06 of this agreement) have been cured within the specified time period agreed to with the IRS.

**(B) Reporting Model 2 FFI.** In the case of a reporting Model 2 FFI, the reporting Model 2 FFI will not be treated as a nonparticipating FFI unless the U.S. Competent Authority has provided the Competent Authority of a Model 2 IGA jurisdiction in which the reporting Model 2 FFI is located notice of significant non-compliance with the terms of this agreement, as modified by the applicable Model 2 IGA, and the matter is not resolved within the 12-month period following the notice of significant non-compliance.

**.04 Significant Change in Circumstances.** For purposes of this agreement, a significant change in circumstances includes—

**(A)** An acquisition of all, or substantially all, of a participating FFI's assets in any transaction in which the participating FFI is not the surviving legal entity;

**(B)** A change in U.S. federal law or policy, or applicable foreign law or policy, that affects the validity of any provision of this agreement, materially affects the provisions contained in this agreement, or materially affects the participating FFI's ability to perform its obligations under this agreement;

**(C)** A ruling of any court that materially affects the validity of any provision of this agreement;

**(D)** A case in which a participating FFI (other than a reporting Model 2 FFI) maintains a limited branch that cannot fulfill the requirements for participating FFI or deemed-compliant FFI status after the expiration of the transitional rule for limited FFIs and limited branches under § 1.1471-4(e)(2)(v) or a participating FFI (other than a reporting Model 2 FFI) is a member of an expanded affiliated group that includes a limited FFI after the expiration of the transitional rule for limited FFIs and limited branches under § 1.1471-4(e)(3)(iv); and

**(E)** A significant change in a participating FFI's business practices that materially affects the participating FFI's ability to meet its obligations under this agreement.

**.05 Event of Default.** For purposes of this agreement, an event of default occurs

if a participating FFI fails to perform any material duty or obligation required under this agreement or if the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement. In addition to the occurrences enumerated in § 1.1471-4(g)(1), an event of default also includes the occurrence of the following:

(A) The participating FFI fails to inform the IRS within 90 days of any significant change in circumstances; or

(B) If the participating FFI is designated by one or more FFIs that are members of an FFI group as a lead FI, the FFI fails, without reasonable cause, to inform the IRS within 90 days of an acquisition, sale, or change affecting the chapter 4 status of an FFI in the FFI group for which it is acting as lead FI, including that such FFI ceases to comply with (or does not otherwise comply with) the requirements to maintain its status as a participating or registered deemed-compliant FFI.

**.06 Notice of Event of Default.** Following an event of default known by, or disclosed to, the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default and requesting that the participating FFI remediate the event of default as described in § 1.1471-4(g)(2). See § 1.1471-4(g)(3) for the remediation process for an event of default.

#### **.07 Termination Procedures**

(A) **Procedure to Appeal Notice of Termination.** If a participating FFI receives a notice of termination of this agreement from the IRS, the participating FFI may appeal the determination within 90 days by sending to the address specified in section 13.05 of this agreement a written notice explaining why this agreement should not be terminated. If a participating FFI appeals the notice of termination, this agreement will not terminate until the appeal is decided. If a participating FFI does not provide a notice of appeal within 90 days, this agreement will terminate on the date specified in the notice of termination.

(B) **Termination of Agreement.** If the participating FFI seeks to terminate this agreement, it is required to provide notice to the IRS through the FATCA registration website. If the FFI's status as a participating FFI is terminated, the FFI must

send notice of the termination within 30 days after the date of termination to all withholding agents and FFIs to which it has provided a withholding certificate pursuant to section 9.01 of this agreement. Shortly after receipt of the notice of termination, the IRS will remove the FFI from the IRS FFI List.

#### **(C) Termination of Status as Compliance FI or Lead FI**

(1) If a participating FFI seeks to terminate its status as either a compliance FI or lead FI, it is required to provide notice of termination on the FATCA registration website in accordance with its instructions or as provided in later published guidance. A lead FFI's notice of termination of its lead FI status will require designation of a new lead FI on the FATCA registration website in accordance with its instructions or as provided in later published guidance.

(2) A compliance FI that terminates its status as a compliance FI will still be required to serve as the point of contact for the IRS with respect to the certification periods (as defined in § 1.1471-4(f)(3)(i)) during which the FFI acted as a compliance FI unless the FFI designates another FI that will act as the compliance FI for such periods and that has full access to the information that relates to such periods.

**.08 Renewal.** If a participating FFI intends to renew this agreement, it may do so via the FATCA registration website available at [www.irs.gov/fatca](http://www.irs.gov/fatca) in accordance with its instructions or as otherwise provided in later published guidance. This agreement will be renewed only upon the agreement of both the participating FFI and the IRS and is subject to modifications to this agreement as the IRS prescribes pursuant to procedures described in section 12.02 of this agreement.

**.09 Treatment of Reporting Model 2 FFIs.** Notwithstanding anything to the contrary in this agreement, a reporting Model 2 FFI is not entering into a binding agreement by agreeing to comply with the terms of this agreement, except to the extent that such an FFI is entering into an agreement on behalf of one or more of its branches in order for each such branch to be treated as a participating FFI. For the avoidance of doubt, compliance with the terms of this agreement requires compliance with the requirement to recertify on

the FATCA registration website that the reporting Model 2 FFI shall comply with the terms of any renewed agreement, including any modified terms pursuant to section 12.02 of this agreement.

## **SECTION 13. MISCELLANEOUS PROVISIONS**

**.01 Waiver.** Any waiver of a provision of this agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this agreement or the same provision at a later date.

**.02 Governing Law.** This agreement is governed by the laws of the United States. Any legal action brought under this agreement will be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, the participating FFI agrees to submit to the jurisdiction of such United States court.

**.03 Notices.** Except as otherwise provided on the FATCA registration website, notices provided under this agreement are to be mailed via registered, first class airmail. All notices sent to the IRS must include the participating FFI's name and GIIN and the name of the participating FFI's responsible officer. Such notices should be directed as follows:

To the IRS:

Internal Revenue Service  
Office of Foreign Payments  
290 Broadway  
New York, New York 10007

To the participating FFI:

The participating FFI's responsible officer (or the responsible officer of the compliance FI for issues related to the participating FFI's compliance with this agreement). Such notices should be sent to the address indicated in the FFI's registration (as may be amended).

## **SECTION 6. EFFECTIVE DATE**

The effective date of this revenue procedure is January 1, 2014.

## SECTION 7. PAPERWORK REDUCTION ACT

This revenue procedure refers to a collection of information in the following sections of the FFI agreement (set forth in section 5 of this revenue procedure): Section 3 regarding the due diligence requirements for account holder and nonparticipating FFI payee identification and documentation; Section 4 regarding withholding requirements; Section 5 regarding deposit requirements; Section 6 regarding information reporting and tax return obligations; Section 7 regarding the legal prohibitions on reporting U.S. accounts and on withholding; Section 8 regarding compliance procedures; Section 9 regarding the participating FFI withholding certificate; and Section 10 regarding adjustments for overwithholding and underwithholding and refunds. Responses to these

collections of information are required for an FFI to comply with the terms of the FFI agreement and not be subject to withholding under section 1471. The likely respondents are individuals, businesses, other for-profit institutions, and certain non-profit institutions.

The estimated information collection burden referred to in this revenue procedure will be reflected in the Forms 8957, W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, W-9, 1040NR, 1042, 1042-S, 1120-F, 1099, and 8966, as well as Form 843 and various income tax returns filed for purposes of claiming a refund of tax. The information collection burden relating to the Section 8 compliance procedures will be reflected in future IRS guidance.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information un-

less the collection of information displays a valid control number assigned by the Office of Management and Budget.

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

## SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Tara N. Ferris of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Ms. Ferris or Kamela Nelan at (202) 317-6942 (not a toll free call).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking

### Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies.

#### REG-140974-11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the **Bulletin**, the IRS and the Department of the Treasury (Treasury Department) are issuing temporary regulations that provide guidance on determining the ownership of a passive foreign investment company (PFIC), the annual filing requirements for shareholders of PFICs, and an exclusion from certain filing requirement for shareholders that constructively own interests in certain foreign corporations. The temporary regulations primarily affect shareholders of PFICs that do not currently file Form 8621, *“Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund”*, with respect to their PFIC interests. The temporary regulations also affect certain shareholders that rely on a constructive ownership exception to the requirement to file Form 5471, *“Information Return of U.S. Persons with Respect to Certain Foreign Corporations.”* The text of those temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by March 31, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-140974-11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to

CC:PA:LPD:PR (REG-140974-11), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-140974-11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Susan E. Massey or Barbara E. Rasch, (202) 317-6934; concerning submissions of comments or requests for a public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

The temporary regulations in this issue of the **Bulletin** amend the Income Tax Regulations (26 CFR part 1) under sections 1291 and 1298 of the Internal Revenue Code (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Accordingly, a regulatory assessment is not required.

It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that most small entities do not own an interest in a PFIC, and the fact that PFIC shareholders (including small entities) that currently report information on Form 8621, *“Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund”*, with respect to a PFIC will not be required to file additional reports with respect to the same PFIC under these proposed regulations. Most small entities that are

shareholders of a PFIC either make a qualified electing fund (QEF) election under section 1295 or make a mark to market election under section 1296 and, therefore, already file Form 8621 with respect to the PFIC stock. In addition, shareholders that are subject to section 1291 as a result of receiving a distribution from a PFIC or disposing of their interest in a PFIC are currently required to file Form 8621. Thus, there is a limited class of PFIC shareholders that will be required to file Form 8621 under these regulations that are not currently required to do so. Accordingly, the collection of information required by these proposed regulations does not affect a substantial number of small entities.

Further, the collection of information required under these proposed regulations does not have a significant economic impact because neither the time nor the costs necessary for shareholders to comply with the collection of information requirements is significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations.

#### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the “Addresses” heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules.

In addition, the IRS and the Treasury Department request comments on whether, for ease of administration, the section 1291(d)(2) deemed dividend and deemed sale elections should be available at the domestic partnership level. In particular, the IRS and the Treasury Department request comments on how the election can be effec-

tuated in a manner consistent with the PFIC regimes and Subchapter K of chapter 1 of the Code. The IRS and the Treasury Department also request comments on the determination of proportionate ownership by a beneficiary of PFIC stock held through a domestic or foreign estate or nongrantor trust.

All comments will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal authors of these proposed regulations are Susan E. Massey and Barbara E. Rasch of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Sections 1.1291-1 and 1.1291-9 also issued under 26 U.S.C. 1298(a) and (g) \* \* \*

Section 1.1298-1 also issued under 26 U.S.C. 1298(f) \* \* \*

Section 1.6038-2 also issued under 26 U.S.C. 6038(d) \* \* \*

Section 1.6046-1 also issued under 26 U.S.C. 6046(b) \* \* \*

\* \* \*

Par. 2. Section 1.1291-0 is amended by adding a listing of the paragraph headings for §§ 1.1291-1 and 1.1291-9 as follows:

§ 1.1291-0 *Passive foreign investment companies — table of contents.*

[The text of the proposed amendments to § 1.1291-0 is the same as the text of

§ 1.1291-0T published elsewhere in this issue of the **Bulletin**].

Par. 3. Section 1.1291-1 is amended by revising the section heading and adding paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), (b)(8), and (k) as follows:

§ 1.1291-1 *Taxation of United States persons that are shareholders of section 1291 funds.*

(a) through (b)(2)(i) [Reserved].

(b)(2)(ii) [The text of the proposed amendments to § 1.1291-1(b)(2)(ii) is the same as the text of § 1.1291-1T(b)(2)(ii) published elsewhere in this issue of the **Bulletin**].

(b)(2)(iii) and (iv) [Reserved].

(v) [The text of the proposed amendments to § 1.1291-1(b)(2)(v) is the same as the text of § 1.1291-1T(b)(2)(v) published elsewhere in this issue of the **Bulletin**].

(3) through (6) [Reserved].

(7) [The text of the proposed amendments to § 1.1291-1(b)(7) is the same as the text of § 1.1291-1T(b)(7) published elsewhere in this issue of the **Bulletin**].

(8) [The text of the proposed amendments to § 1.1291-1(b)(8) is the same as the text of § 1.1291-1T(b)(8) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(k) [The text of the proposed amendments to § 1.1291-1(k) is the same as the text of § 1.1291-1T(k) published elsewhere in this issue of the **Bulletin**].

Par. 4. Section 1.1291-9 is amended by revising paragraph (j)(3) and adding paragraph (k)(3) as follows:

§ 1.1291-9 *Deemed dividend election.*

\* \* \* \* \*

(j) \* \* \*

(3) [Reserved]. For further guidance, see § 1.1291-9T(j)(3).

(k) \* \* \*

(3) [The text of the proposed amendments to § 1.1291-9(k)(3) is the same as the text of § 1.1291-9T(k)(3) published elsewhere in this issue of the **Bulletin**].

Par. 5. Section 1.1298-0 is amended by adding a listing of the paragraph headings for § 1.1298-1 as follows:

§ 1.1298-0 *Table of contents.*

[The text of the proposed amendments to § 1.1298-0 is the same as the text of

§ 1.1298-0T published elsewhere in this issue of the **Bulletin**].

Par. 6. Section 1.1298-1 is added to read as follows:

§ 1.1298-1 *Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company.*

[The text of the proposed amendments to § 1.1298-1 is the same as the text of § 1.1298-1T(h) published elsewhere in this issue of the **Bulletin**].

Par. 7. Section 1.6038-2 is amended by revising paragraph (j)(3) to read as follows:

§ 1.6038-2 *Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.*

\* \* \* \* \*

(j) \* \* \*

(3) [The text of the proposed amendments to § 1.6038-2(j)(3) is the same as the text of § 1.6038-2T(j)(3) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

Par. 8. Section 1.6046-1 is amended by revising paragraph (e)(5) to read as follows:

§ 1.6046-1 *Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.*

\* \* \* \* \*

(e) \* \* \*

(5) [The text of the proposed amendments to § 1.6046-1(e)(5) is the same as the text of § 1.6046-1T(e)(5) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

John Dalrymple,  
*Deputy Commissioner for Services and Enforcement.*

(Filed in the Office of the Federal Register on December 30, 2013, 8:45 a.m., and published in the issue of the Federal Register for December 31, 2013, 78 F.R. 79602)

# Partial Withdrawal of Notice of Proposed Rulemaking Taxation of U.S. Persons that Are Shareholders of Section 1291 Funds

## REG-113350-13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a portion of a proposed rulemaking (INTL-656-87, REG-209054-87) published in the **Federal Register** on April 1, 1992. The withdrawn portion relates to the definitions of the terms pedigreed QEF, section 1291 fund, shareholder, and indirect shareholder, and to annual information reporting requirements applicable to certain shareholders of passive foreign investment companies (PFICs).

DATES: The proposed rule published in the **Federal Register** on April 1, 1992 (57 FR 11024) is withdrawn as of December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Susan E. Massey or Barbara E. Rasch, (202) 317-6934 (not a toll-free number).

### SUPPLEMENTARY INFORMATION:

#### Background

On April 1, 1992, the IRS and the Department of the Treasury (Treasury Department) published in the **Federal Register** proposed regulations (INTL-656-87, 1992-18 IRB 23, 57 FR 11024), including § 1.1291-1 that provided guidance on the PFIC rules, including definitions of the terms pedigreed QEF, section 1291 fund, shareholder, and indirect shareholder. The proposed regulations also set forth annual reporting requirements for certain shareholders of PFICs. This document withdraws the definitions of the terms pedigreed QEF, section 1291 fund, shareholder, and indirect shareholder. In addition, this document with-

draws the annual reporting requirements. The IRS and the Treasury Department are issuing a notice of proposed rulemaking in this issue of the **Bulletin** on this subject that defines the terms pedigreed QEF, section 1291 fund, shareholder, and indirect shareholder, and that sets forth annual information reporting requirements for certain shareholders of PFICs.

\*\*\*\*\*

#### Partial Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.1291-1(b)(2)(ii), (b)(2)(v), (b)(7), (b)(8), and (i) of the notice of proposed rulemaking (INTL-656-87, REG-209054-87) published in the **Federal Register** on April 1, 1992 (57 FR 11024) are withdrawn.

John Dalrymple,  
*Deputy Commissioner for Services and Enforcement.*

(Filed in the office of the Federal Register on December 30, 2013, 8:45 a.m., and published in the issue of the Federal Register for December 31, 2013, 78 F.R. 79652)

# Definition of Terms

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered deter-

minative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued

without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2013–27 through 2013–52 is in Internal Revenue Bulletin 2013–52, dated December 23, 2013.

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<sup>1</sup>A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2013–27 through 2013–52 is in Internal Revenue Bulletin 2013–52, dated December 23, 2013.

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### Key to Abbreviations:

|     |                                  |
|-----|----------------------------------|
| Ann | Announcement                     |
| CD  | Court Decision                   |
| DO  | Delegation Order                 |
| EO  | Executive Order                  |
| PL  | Public Law                       |
| PTE | Prohibited Transaction Exemption |
| RP  | Revenue Procedure                |
| RR  | Revenue Ruling                   |
| SPR | Statement of Procedural Rules    |
| TC  | Tax Convention                   |
| TD  | Treasury Decision                |
| TDO | Treasury Department Order        |

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