

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2017-6**  
**February 6, 2017**

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

### **Rev. Rul. 2017-4, page 776.**

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, 7872, and other sections of the Code, tables set forth the rates for February 2017.

### **Rev. Proc. 2017-13, page 787.**

This revenue procedure provides safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under section 141(b) of the Internal Revenue Code or cause the modified private business use test for property financed with qualified 501(c)(3) bonds under section 145(a)(2)(B) to be met.

### **Notice 2017-14, page 783.**

This notice provides that the hardship exemption from the individual shared responsibility payment under § 5000A, described by the Department of Health and Human Services, for an individual who is not enrolled in health insurance coverage that qualifies for the health coverage tax credit (HCTC) allowed by § 35 for one more month between July 2016 and December 2016, but who would have been eligible for the HCTC under § 35 if enrolled, may be claimed on a Federal income tax return without obtaining a hardship exemption certification from the Marketplace.

### **Rev. Proc. 2017-21, page 791.**

This revenue procedure updates the agreements entered into by withholding foreign partnerships (WPs) and withholding foreign trusts (WTs), as provided in Revenue Procedure 2014-47. These agreements were to expire on December 31, 2016, but were extended in Revenue Procedure 2017-15 in anticipation of the new agreements being issued in January 2017. This revenue procedure will apply to WP and WT agreements effective on or after the date of issuance of this revenue

procedure. The WP and WT agreements are updated consistent with recently published guidance, including the qualified intermediary withholding agreement, which was published in Revenue Procedure 2017-15. The revenue procedure also provides information on submitting an application or request for renewal of a WP or WT agreement.

### **T.D. 9810, page 775.**

In general, S corporations, regulated investment companies ("RICs"), and real estate investment trusts ("REITs") are not taxed at the corporate level (in the case of S corporations) or rarely incur corporate-level tax (in the case of RICs and REITs). An exception to this general rule occurs when an S corporation, a RIC, or a REIT disposes of certain property previously held by a C corporation within a specified period of time, known as the "recognition period." The length of the recognition period for S corporations is provided by statute, while the length of the recognition period for RICs and REITs is provided by regulations. These final regulations will conform the length of the recognition period for RICs and REITs to the length of the recognition period for S corporations.

## EMPLOYEE PLANS

### **REG-131643-15, page 865.**

These proposed regulations would amend the regulations under section 401(k) to provide that amounts used to fund qualified matching contributions and qualified nonelective contributions must satisfy certain nonforfeatability and distribution requirements when they are allocated to participants' accounts, and not when they are first contributed to the plan.

**(Continued on the next page)**

### **Notice 2017–13, page 780.**

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for January 2017 used under § 417(e)(3)(D), the 24-month average segment rates applicable for January 2017, and the 30-year Treasury rates. These rates reflect the application of § 430(h)(2)(C)(iv), which was added by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP–21) and amended by section 2003 of the Highway and Transportation Funding Act of 2014 (HATFA).

## **ESTATE TAX**

### **Notice 2017–15, page 783.**

The notice provides special administrative procedures for allowing certain taxpayers and the executors of certain taxpayers' estates to recalculate a taxpayer's remaining applicable exclusion amount and remaining GST exemption to the extent an allocation of that exclusion or exemption was made to certain transfers made while the taxpayer was married to a person of the same sex.

## **GIFT TAX**

### **Notice 2017–15, page 783.**

The notice provides special administrative procedures for allowing certain taxpayers and the executors of certain taxpayers' estates to recalculate a taxpayer's remaining applicable exclusion amount and remaining GST exemption to the extent an allocation of that exclusion or exemption was made to certain transfers made while the taxpayer was married to a person of the same sex.

## **EXCISE TAX**

### **Notice 2017–5, page 779.**

Notice 2017–5 provides interim definitions of the terms "chassis" and "body" for purposes of section 4051(a)(1) and for purposes of applying the safe harbor provision in section 4052(f)(1). This notice also requests comments on the interim definitions.

## **ADMINISTRATIVE**

### **Rev. Proc. 2017–22, page 863.**

This procedure clarifies Rev. Proc. 2010–46, 2010–49 I.R.B. 814, which provides a safe harbor under section 118(a) of the Code for certain amounts received by corporate taxpayers under certain Department of Transportation programs. Rev. Proc. 2010–46 is clarified.

# 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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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

## T.D. 9810

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations effecting the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986. The final regulations address the length of time during which a RIC or a REIT may be subject to corporate level tax on certain dispositions of property. The final regulations affect RICs and REITs.

DATES: *Effective Date:* These regulations are effective January 18, 2017.

*Applicability Dates:* For dates of applicability, see § 1.337(d)-7(g)(2)(iii).

FOR FURTHER INFORMATION CONTACT: Austin M. Diamond-Jones, (202) 317-5363 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to 26 CFR part 1. On June 8, 2016, the Department of the Treasury (Treasury Department) and the IRS published temporary regulations (TD 9770) under section 337(d) (temporary regulations) in the **Federal Register** (81 FR 36793) concerning certain transfers of property to regulated investment companies (RICs) and real estate investment trusts (REITs). A notice of proposed rulemaking cross-referencing the temporary regulations (REG-126452-15) (proposed regulations) was published in the **Fed-**

**eral Register** (81 FR 36816) on the same day. A correction to the temporary regulations was published in the **Federal Register** (81 FR 41800) on June 28, 2016. The Treasury Department and the IRS received one written comment in response to the proposed regulations. The comment requested a public hearing, and a hearing was held on November 9, 2016. After consideration of the written comment and the comments made at the public hearing, the proposed regulations are adopted in part and as amended by this Treasury decision, and the corresponding temporary regulations are removed in part. The revisions adopted by this Treasury decision are discussed below.

##### Summary of Comments and Explanation of Revisions

The comment requested that the temporary regulations and the proposed regulations with respect to the recognition period be immediately withdrawn and the recognition period with respect to REITs be defined with reference to the recognition period of section 1374(d)(7), which is currently a five-year period as a result of section 127(a) of the Protecting Americans Against Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Public Law 114-113, 129 Stat. 2422. The comment asserted that the change to the length of the recognition period in the temporary regulations and the proposed regulations was inconsistent with Congress's intent in the PATH Act and with prior administrative guidance. On October 18, 2016, the Chairmen and Ranking Members of the Ways and Means Committee of the U.S. House of Representatives and the Finance Committee of the U.S. Senate addressed a letter to the Secretary of the Treasury stating that the recognition period in the temporary regulations and the proposed regulations was inconsistent with congressional intent and the longstanding practice of treating REITs and RICs as having the same built-in gain recognition period as S corporations, currently five years. The Chairmen and

Ranking Members also asked that the temporary regulations and the proposed regulations be modified to provide that REITs, RICs and S corporations are all subject to the same five-year built-in gain recognition period in order to be consistent with congressional intent and longstanding practice.

The Treasury Department and the IRS decline to withdraw the temporary regulations and the proposed regulations relating to the recognition period but agree with the comment relating to the length of the recognition period. Accordingly, these final regulations provide that the term *recognition period* means the recognition period described in section 1374(d)(7), beginning, in the case of a conversion transaction that is a qualification of a C corporation as a RIC or a REIT, on the first day of the RIC's or the REIT's first taxable year, and, in the case of other conversion transactions, on the day the RIC or the REIT acquires the property. The final regulations will apply prospectively from February 17, 2017, but taxpayers may choose to apply the definition of recognition period in the final regulations, instead of the 10-year recognition period in the temporary regulations, for conversion transactions occurring on or after August 8, 2016, and on or before February 17, 2017.

The Treasury Department and the IRS continue to study the other issues addressed in the temporary regulations and the proposed regulations, including other issues raised by the comment, and welcome further comment on those issues.

##### Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation

will primarily affect large corporations with a substantial number of shareholders. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

#### Drafting Information

The principal author of these regulations is Austin M. Diamond-Jones, Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

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#### 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 continues to read as follows:

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

Par. 2. Section 1.337(d)-7 is amended by revising paragraphs (b)(2)(iii) and (g)(2)(iii) to read as follows:

*§ 1.337(d)-7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.*

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*

(iii) *Recognition period.* For purposes of applying the rules of section 1374 and the regulations thereunder, as modified by paragraph (b) of this section, the term *recognition period* means the recognition period described in section 1374(d)(7), beginning—

(A) In the case of a conversion transaction that is a qualification of a C corporation as a RIC or a REIT, on the first day of the RIC's or the REIT's first taxable year; and

(B) In the case of other conversion transactions, on the day the RIC or the REIT acquires the property.

\* \* \* \* \*

(g) \* \* \*  
(2) \* \* \*

(iii) *Recognition period.* Paragraphs (b)(1)(ii) and (d)(2)(iii) of this section apply to conversion transactions that occur on or after August 8, 2016. Paragraph (b)(2)(iii) of this section applies to conversion transactions that occur after February 17, 2017. For conversion transactions that occurred on or after August 8, 2016 and on or before February 17, 2017, see § 1.337(d)-7T(b)(2)(iii) in effect on August 8, 2016. However, taxpayers may apply paragraph (b)(2)(iii) of this section to conversion transactions that occurred on or after August 8, 2016 and on or before February 17, 2017. For conversion transactions that occurred on or after January 2, 2002 and before August 8, 2016, see § 1.337(d)-7 as contained in 26 CFR part 1 in effect on April 1, 2016.

Par. 3. Section 1.337(d)-7T is amended by revising paragraphs (b)(1) through (3) and (g)(2)(iii) to read as follows:

*§ 1.337(d)-7T Tax on property owned by a C corporation that becomes property of a RIC or REIT.*

\* \* \* \* \*

(b)(1) through (3) [Reserved]. For further guidance, see § 1.337(d)-7(b)(1) through (3).

\* \* \* \* \*

(g) \* \* \*  
(2) \* \* \*

(iii) [Reserved]. For further guidance, see § 1.337(d)-7(g)(2)(iii).

\* \* \* \* \*

John Dalrymple,  
Deputy Commissioner for  
Services and Enforcement.

Approved: December 30, 2016.

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

(Filed by the Office of the Federal Register on January 17, 2017, 8:45 a.m., and published in the issue of the Federal Register for January 18, 2017, 82 F.R. 5387)

## Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 467, 468, 482, 483, 642, 1288, 7520, 7872.)

### Rev. Rul. 2017-4

This revenue ruling provides various prescribed rates for federal income tax purposes for February 2017 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2017-4 TABLE 1  
Applicable Federal Rates (AFR) for February 2017  
*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
		<i>Short-term</i>		
AFR	1.04%	1.04%	1.04%	1.04%
110% AFR	1.14%	1.14%	1.14%	1.14%
120% AFR	1.25%	1.25%	1.25%	1.25%
130% AFR	1.35%	1.35%	1.35%	1.35%
		<i>Mid-term</i>		
AFR	2.10%	2.09%	2.08%	2.08%
110% AFR	2.31%	2.30%	2.29%	2.29%
120% AFR	2.53%	2.51%	2.50%	2.50%
130% AFR	2.74%	2.72%	2.71%	2.70%
150% AFR	3.16%	3.14%	3.13%	3.12%
175% AFR	3.69%	3.66%	3.64%	3.63%
		<i>Long-term</i>		
AFR	2.81%	2.79%	2.78%	2.77%
110% AFR	3.09%	3.07%	3.06%	3.05%
120% AFR	3.38%	3.35%	3.34%	3.33%
130% AFR	3.66%	3.63%	3.61%	3.60%

REV. RUL. 2017-4 TABLE 2  
Adjusted AFR for February 2017  
*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.77%	.77%	.77%	.77%
Mid-term adjusted AFR	1.56%	1.55%	1.55%	1.55%
Long-term adjusted AFR	2.09%	2.08%	2.07%	2.07%

REV. RUL. 2017-4 TABLE 3  
Rates Under Section 382 for February 2017

Adjusted federal long-term rate for the current month	2.09%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.09%

REV. RUL. 2017-4 TABLE 4  
Appropriate Percentages Under Section 42(b)(1) for February 2017

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.56%
Appropriate percentage for the 30% present value low-income housing credit	3.24%

REV. RUL. 2017-4 TABLE 5  
Rate Under Section 7520 for February 2017

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest 2.6%

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### **Section 42.—Low-Income Housing Credit**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 280G.—Golden Parachute Payments**

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change**

The adjusted applicable federal long-term rate is set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 467.—Certain Payments for the Use of Property or Services**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month

of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 482.—Allocation of Income and Deductions Among Taxpayers**

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 483.—Interest on Certain Deferred Payments**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 642.—Special Rules for Credits and Deductions**

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 7520.—Valuation Tables**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

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### **Section 7872.—Treatment of Loans With Below-Market Interest Rates**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2017. See Rev. Rul. 2017-4, page 776.

# Part III. Administrative, Procedural, and Miscellaneous

## Interim Guidance and Request for Comments on Definitions of Chassis and Body; Retail Excise Tax on Heavy Trucks, Trailers, and Tractors

### Notice 2017-5

#### SECTION 1. PURPOSE

This notice provides interim guidance relating to the excise tax imposed by § 4051 of the Internal Revenue Code on the first retail sale of heavy trucks, trailers, and tractors. Specifically, this notice provides interim definitions of the terms “chassis” and “body” for purposes of § 4051(a)(1) and for purposes of applying the safe harbor provision in § 4052(f)(1). This notice also requests comments on the interim definitions.

#### SECTION 2. BACKGROUND

Section 4051(a)(1) imposes a 12-percent tax on the first retail sale of automobile truck chassis and bodies, truck trailer and semitrailer chassis and bodies, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer. Section 145.4051-1(e)(1)(i) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982 defines “tractor” as a highway vehicle primarily designed to tow a vehicle, such as a trailer or a semitrailer, but does not carry cargo on the same chassis as the engine.

Generally, the § 4051 tax applies to the first retail sale of an article. Section 4052(a)(1) defines “first retail sale” as the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation. The safe harbor provision in § 4052(f)(1) excludes from the definition of “manufactured” or “produced” an article that is repaired or modified (including any modification that changes the transportation function of the article or restores a wrecked article to a functional condition) if the cost of such repairs and modifications does not exceed 75 percent of the retail price of a comparable new article.

Neither the Code nor the regulations define the terms “chassis” or “body” for purposes of determining articles that are subject to tax under § 4051(a)(1). Likewise, there is no definition of “chassis” or “body” for determining whether an article satisfies the safe harbor provision in § 4052(f)(1).

The Treasury Department and the IRS recognize that taxpayers would benefit from having definitions of “chassis” and “body” in order to identify chassis and bodies that are subject to tax under § 4051(a)(1) and in order to apply the safe harbor provision in § 4052(f)(1). Accordingly, the Treasury Department and the IRS have adopted interim definitions of “chassis” and “body” for these purposes. The interim definitions are set forth in Section 3 of this notice. In crafting these definitions, the Treasury Department and the IRS consulted numerous sources, including the Society of Automotive Engineers (SAE) Glossary of Automotive Terms and Title 49 of the Code of Federal Regulations (Transportation).

#### SECTION 3. DEFINITIONS OF CHASSIS AND BODY

.01 A “chassis” is a vehicle’s frame and supporting structure and all those components that are attached to it, except those components that are exempt from tax, such as certain idling reduction devices described in § 4053(9).

For purposes of § 4051(a)(1)(A) and (E), the following is a nonexclusive list of components that are attached to and, therefore, part of a chassis:

- engine
- axles
- transmission
- drive train
- suspension
- exhaust aftertreatment system (including, but not limited to, a diesel particulate filter)
- cab

For purposes of § 4051(a)(1)(E), a chassis includes a chassis cab within the meaning of § 145.4051-1(e)(1)(ii)(A), (B) and (D).

A chassis does not include a vehicle’s body, as defined in Section 3.02 of this notice.

.02 A “body” is the cargo or load carrying structure of a truck, trailer, or semitrailer. Examples of a body include, but are not limited to, a flatbed body, a tanker body, and a box body.

#### SECTION 4. APPLICATION OF CHASSIS AND BODY DEFINITIONS TO SECTION 4052(f)(1)

Section 4052(f)(1) provides that an article taxed under § 4051(a)(1) is not treated as manufactured or produced solely by reason of repairs or modifications to the article if the cost of the repairs and modifications does not exceed 75 percent of the retail price of a comparable new article. The safe harbor provision in § 4052(f)(1) applies only to a § 4051(a)(1) article that has been previously taxed. *See* § 4052(f)(2). The § 4051(a)(1) articles are: truck chassis and bodies, truck trailer and semitrailer chassis and bodies, and highway tractors. Therefore, a taxpayer must repair or modify one of the seven articles identified in § 4051(a)(1) in order to use the safe harbor provision in § 4052(f)(1).

For purposes of § 4052(f)(1), the IRS will use the definitions of chassis and body in Section 3 of this notice to determine the threshold issue of whether a § 4051(a)(1) article has been repaired or modified. In other words, the § 4052(f)(1) safe harbor provision may be applied to a chassis or body only if the chassis or body being repaired or modified is identifiable as such within the meaning of Section 3 of this notice.

#### SECTION 5. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on the interim definitions of “chassis” and “body” set forth in Section 3 of this notice. The deadline for submission of comments is May 9, 2017.

Written comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2017-5), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. 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 2017–5), Courier’s Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC.

Alternatively, comments may be submitted electronically via the following e-mail address: Notice.Comments@irs.counsel.treas.gov. Please include “Notice 2017–5” in the subject line of an electronic communication.

All submissions will be available for public inspection and copying in room 1621, 1111 Constitution Avenue, NW, Washington, DC, from 9 a.m. to 4 p.m.

## SECTION 6. EFFECTIVE DATE

This notice is effective on and after January 9, 2017.

## SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Celia Gabrysh of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Celia Gabrysh or Amanda Dunlap at (202) 317-6855 (not a toll-free number).

# Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

## Notice 2017–13

This notice provides guidance on the corporate bond monthly yield curve, the

corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

## YIELD CURVE AND SEGMENT RATES

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006 and CSEC plans under § 414(y), § 430 of the Code specifies the minimum funding requirements that apply to single-employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan’s target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates (“segment rates”), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.<sup>1</sup> However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007–81, the monthly corporate bond yield curve derived from December 2016 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of December 2016 are, respectively, 2.04, 4.03, and 4.82.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For plan years beginning before 2021, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. The 25-year average segment rates for plan years beginning in 2015, 2016, and 2017 were published in Notice 2014–50, 2014–40 I.R.B. 590, Notice 2015–61, 2015–39 I.R.B. 408, and Notice 2016–54, 2016–40 I.R.B. 429, respectively.

## 24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for January 2017 without adjustment for the 25-year average segment rate limits are as follows:

Applicable Month	First Segment	Second Segment	Third Segment
January 2017	1.57	3.77	4.73

Based on § 430(h)(2)(C)(iv), the 24-month averages applicable for January

2017 adjusted to be within the applicable minimum and maximum percentages of

the corresponding 25-year average segment rates, are as follows:

<sup>1</sup>Pursuant to § 433(h)(3)(A), the 3<sup>rd</sup> segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

For Plan Years Beginning In	Applicable Month		Adjusted 24-Month Average Segment Rates		
			First Segment	Second Segment	Third Segment
2015	January	2017	4.72	6.11	6.81
2016	January	2017	4.43	5.91	6.65
2017	January	2017	4.16	5.72	6.48

**30-YEAR TREASURY SECURITIES INTEREST RATES**

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multi-employer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)

(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest

on 30-year Treasury securities for December 2016 is 3.11 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in November 2046. For plan years beginning in the month shown below, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rate used to calculate current liability are as follows:

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
Month	Year		90%	to	105%
January	2017	2.90	2.61		3.05

**MINIMUM PRESENT VALUE SEGMENT RATES**

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates

computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value seg-

ment rates determined for December 2016 are as follows:

First Segment	Second Segment	Third Segment
2.04	4.03	4.82

**DRAFTING INFORMATION**

The principal author of this notice is Tom Morgan of the Office of the Associ-

ate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS participated in the development of this guidance. For further

information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 202-317-8698 (not toll-free numbers).

**Table I**  
 Monthly Yield Curve for December 2016  
 Derived from December 2016 Data

<i>Maturity</i>	<i>Yield</i>								
0.5	1.12	20.5	4.60	40.5	4.85	60.5	4.93	80.5	4.98
1.0	1.41	21.0	4.62	41.0	4.85	61.0	4.94	81.0	4.98
1.5	1.67	21.5	4.63	41.5	4.85	61.5	4.94	81.5	4.98
2.0	1.88	22.0	4.64	42.0	4.86	62.0	4.94	82.0	4.98
2.5	2.06	22.5	4.65	42.5	4.86	62.5	4.94	82.5	4.98
3.0	2.21	23.0	4.65	43.0	4.86	63.0	4.94	83.0	4.98
3.5	2.34	23.5	4.66	43.5	4.86	63.5	4.94	83.5	4.98
4.0	2.46	24.0	4.67	44.0	4.87	64.0	4.94	84.0	4.98
4.5	2.58	24.5	4.68	44.5	4.87	64.5	4.94	84.5	4.98
5.0	2.71	25.0	4.69	45.0	4.87	65.0	4.95	85.0	4.98
5.5	2.83	25.5	4.69	45.5	4.88	65.5	4.95	85.5	4.99
6.0	2.96	26.0	4.70	46.0	4.88	66.0	4.95	86.0	4.99
6.5	3.08	26.5	4.71	46.5	4.88	66.5	4.95	86.5	4.99
7.0	3.20	27.0	4.72	47.0	4.88	67.0	4.95	87.0	4.99
7.5	3.32	27.5	4.72	47.5	4.89	67.5	4.95	87.5	4.99
8.0	3.44	28.0	4.73	48.0	4.89	68.0	4.95	88.0	4.99
8.5	3.55	28.5	4.74	48.5	4.89	68.5	4.95	88.5	4.99
9.0	3.65	29.0	4.74	49.0	4.89	69.0	4.96	89.0	4.99
9.5	3.75	29.5	4.75	49.5	4.89	69.5	4.96	89.5	4.99
10.0	3.84	30.0	4.75	50.0	4.90	70.0	4.96	90.0	4.99
10.5	3.92	30.5	4.76	50.5	4.90	70.5	4.96	90.5	4.99
11.0	4.00	31.0	4.77	51.0	4.90	71.0	4.96	91.0	4.99
11.5	4.07	31.5	4.77	51.5	4.90	71.5	4.96	91.5	4.99
12.0	4.13	32.0	4.78	52.0	4.91	72.0	4.96	92.0	4.99
12.5	4.19	32.5	4.78	52.5	4.91	72.5	4.96	92.5	4.99
13.0	4.24	33.0	4.79	53.0	4.91	73.0	4.96	93.0	5.00
13.5	4.29	33.5	4.79	53.5	4.91	73.5	4.97	93.5	5.00
14.0	4.33	34.0	4.80	54.0	4.91	74.0	4.97	94.0	5.00
14.5	4.37	34.5	4.80	54.5	4.91	74.5	4.97	94.5	5.00
15.0	4.40	35.0	4.81	55.0	4.92	75.0	4.97	95.0	5.00
15.5	4.43	35.5	4.81	55.5	4.92	75.5	4.97	95.5	5.00
16.0	4.45	36.0	4.81	56.0	4.92	76.0	4.97	96.0	5.00
16.5	4.48	36.5	4.82	56.5	4.92	76.5	4.97	96.5	5.00
17.0	4.50	37.0	4.82	57.0	4.92	77.0	4.97	97.0	5.00
17.5	4.52	37.5	4.83	57.5	4.92	77.5	4.97	97.5	5.00
18.0	4.54	38.0	4.83	58.0	4.93	78.0	4.97	98.0	5.00
18.5	4.55	38.5	4.83	58.5	4.93	78.5	4.97	98.5	5.00
19.0	4.57	39.0	4.84	59.0	4.93	79.0	4.98	99.0	5.00
19.5	4.58	39.5	4.84	59.5	4.93	79.5	4.98	99.5	5.00
20.0	4.59	40.0	4.84	60.0	4.93	80.0	4.98	100.0	5.00

# Individual Shared Responsibility Payment Hardship Exemption that May Be Claimed on a Federal Income Tax Return Without Obtaining a Hardship Exemption Certification from the Marketplace

## Notice 2017-14

### PURPOSE

This notice supplements Notice 2014-76, 2014-50 I.R.B. 946, by identifying an additional hardship exemption from the individual shared responsibility payment under § 5000A of the Internal Revenue Code that a taxpayer may claim on a Federal income tax return without obtaining a hardship exemption certification from the Health Insurance Marketplace (Marketplace).

### BACKGROUND

For each month beginning after December 31, 2013, § 5000A requires individuals to have minimum essential health coverage for themselves and any nonexempt family member whom the taxpayer may claim as a dependent, to qualify for an exemption, or to include an individual shared responsibility payment with their Federal income tax return.

Section 5000A(e)(5) and § 1.5000A-3(h) of the Income Tax Regulations provide that, in general, an individual is exempt from § 5000A for a month if he or she has in effect a hardship exemption certification issued by the Marketplace certifying that the individual has suffered a hardship (as that term is defined in 45 CFR 155.605(d)) affecting the individual's capability to obtain minimum essential coverage in that month. Section 1.5000A-3(h)(3) provides that an individual may claim a hardship exemption on the individual's Federal income tax return without obtaining a hardship exemption certification from the Marketplace if the individual is eligible for a hardship exemption described in guidance released by the Department of Health and Human Services (HHS) and the exemption is allowed

to be claimed on the individual's Federal income tax return without obtaining a hardship exemption certification from the Marketplace pursuant to guidance published by the Treasury Department and the Internal Revenue Service. Notice 2014-76 provides a list of hardship exemptions that may be claimed on a Federal income tax return without obtaining a hardship exemption certification. *See also* 45 CFR 155.605(e) (providing a partial list of hardship exemptions that may be claimed on a tax return without obtaining an exemption certification). This notice expands that list by providing an additional hardship exemption that may be claimed on a Federal income tax return without obtaining a hardship exemption certification.

### DISCUSSION

This notice recognizes the following hardship identified by HHS and allows a qualifying individual (or the taxpayer who may claim a qualifying individual as a dependent) to claim a hardship exemption on a Federal income tax return without obtaining a hardship exemption certification from the Marketplace. Accordingly, the Discussion section of Notice 2014-76 is supplemented by adding the following paragraph:

*G. Individuals eligible for the Health Coverage Tax Credit (HCTC) but not enrolled in HCTC-qualifying health coverage.* In guidance released on August 12, 2016, HHS provides that any individual who is not enrolled in HCTC-qualifying health insurance coverage for one or more months between July 2016 and December 2016, but who would have been eligible for the HCTC under § 35 if enrolled, is entitled to a hardship exemption for the months during that period when he or she was HCTC-eligible. This exemption applies to eligible individuals (within the meaning of § 35(c)) and qualifying family members (within the meaning of § 35(d)). *See* HHS Centers for Medicare & Medicaid Services, Guidance on Health Coverage Tax Credit Hardship Exemption (Aug. 12, 2016) (available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Guidance-for-5000A-HCTC.pdf>). An individual meeting the requirements described above may claim a hardship exemption on a Federal income tax return without ob-

taining a hardship exemption certification for any month or months between July 2016 and December 2016 for which that individual (or qualifying family member) would have been eligible for the HCTC if he or she enrolled in HCTC-qualifying coverage.

Individuals seeking a hardship exemption that is not described in this notice or listed in Notice 2014-76 can apply for an exemption through the Marketplace.

### EFFECT ON OTHER DOCUMENTS

Notice 2014-76 is supplemented.

### EFFECTIVE DATE

This notice applies to taxable years ending after June 30, 2016.

### DRAFTING INFORMATION

The principal author of this notice is James Beatty of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Beatty at (202) 317-7006 (not a toll-free number).

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## Notice 2017-15

### PURPOSE

This notice provides guidance on the application of the decision in *United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013), and the holdings of Revenue Ruling 2013-17, 2013-38 I.R.B. 201, to the rules regarding the applicable exclusion amount under §§ 2010(c) and 2505 of the Internal Revenue Code (Code), and the generation-skipping transfer (GST) exemption under § 2631, as they relate to certain gifts, bequests, and generation-skipping transfers by (or to) same-sex spouses. In particular, this notice provides special administrative procedures allowing certain taxpayers and the executors of certain taxpayers' estates to recalculate a taxpayer's remaining applicable exclusion amount and remaining GST exemption to the extent an allocation of that exclusion or exemption was made to certain transfers made while the taxpayer was married to a person of the same sex.

With respect to the applicable exclusion amount applied to a transfer between spouses that did not qualify for the marital deduction for federal estate or gift tax purposes at the time of the transfer, based solely on the application of the Defense of Marriage Act (DOMA), Public Law 104–199 (110 Stat. 2419), taxpayers will be permitted to establish that transfer’s qualification for the marital deduction and to recover the applicable exclusion amount previously applied on a return by reason of such a transfer, even if the limitations period applicable to that return for the assessment of tax or for claiming a credit or refund of tax under §§ 6501 or 6511, respectively, has expired. If, however, qualification for the marital deduction or a reverse qualified terminable interest property (QTIP) election would require a QTIP, qualified domestic trust (QDOT), or reverse QTIP election, such taxpayers will have to request relief pursuant to § 301.9100–3 of the Procedure and Administration Regulations to make such an election.

With respect to a taxpayer’s GST exemption that was allocated to transfers made, prior to the recognition of same-sex marriages for federal tax purposes, to or for the benefit of one or more persons in a same-sex marriage and/or any other person(s) whose generation assignment is determined under § 2651 with reference to a same-sex spouse, certain exemption allocations to transfers to persons now recognized to be non-skip persons as defined in § 2613(b) will be deemed void. Accordingly, taxpayers who made such a transfer will be permitted to recalculate the amount of their remaining GST exemption.

## BACKGROUND

Prior to the decision of the Supreme Court in *Windsor*, the Internal Revenue Service (IRS) interpreted section 3 of DOMA as prohibiting it from recognizing same-sex marriages for federal tax purposes. Specifically, section 3 of DOMA provided that:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal

union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.

### 1 U.S.C. § 7.

As a result, taxpayers in a same-sex marriage were not treated as married for purposes of gift, estate, and GST taxes and were not entitled to claim a marital deduction for gifts or bequests to each other. Those taxpayers were required to use their applicable exclusion amount under § 2505 or § 2010(c) to defray any gift or estate tax imposed on the transfer or were required to pay gift or estate taxes, to the extent the taxpayer’s exclusion previously had been exhausted. Further, taxpayers in a same-sex marriage were not allowed to determine generation assignments for GST tax purposes based on a familial relationship with the spouse rather than on age.

In *Windsor*, the Supreme Court held that section 3 of DOMA is unconstitutional because it violates the principles of equal protection. Subsequently, the IRS issued Revenue Ruling 2013–17, which provides that, for federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex. Revenue Ruling 2013–17 also provides a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. In addition, the terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term “marriage” does not include such formal relationships.

Revenue Ruling 2013–17 provides that its holdings will be applied prospectively

as of September 16, 2013, the date of its publication in the Internal Revenue Bulletin. Taxpayers in a same-sex marriage recognized under state law may rely upon the revenue ruling to file original, amended, or adjusted returns, or claims for credits or refunds for any overpayment of tax resulting from the holdings in the revenue ruling, provided that the applicable limitations period for filing such a claim under § 6511 has not expired.

On September 2, 2016, the Department of the Treasury (Treasury Department) and the IRS published in the Federal Register (81 FR 60609–01) final regulations (T.D. 9785) amending the regulations under § 7701 to provide that, for federal tax purposes, the terms “spouse,” “husband,” and “wife” mean an individual lawfully married to another individual, and the term “husband and wife” means two individuals lawfully married to each other. *See also* § 301.7701–18. In addition, the final regulations provide that a marriage of two individuals will be recognized for federal tax purposes if that marriage would be recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of the domicile of the parties to the marriage or, for a foreign marriage, if the relationship would be recognized as marriage by at least one state, possession, or territory of the United States, regardless of the domicile of the parties. Finally, the final regulations clarify that the term “marriage” does not include registered domestic partnerships, civil unions, or other similar relationships recognized under state law that are not denominated as a marriage under that state’s law, and the terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals who have entered into such a relationship.

## SPECIAL ADMINISTRATIVE PROCEDURES

### 1. Marital Deduction and Applicable Exclusion Amount

Section 2001(a) imposes an estate tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States. Section 2010(a) provides that a credit of the applicable credit amount is allowed to the estate of every

decendent against the tax imposed by § 2001. Section 2010(c)(1) defines the applicable credit amount as the amount of the tentative tax that would be determined under § 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount. Section 2010(c)(2) defines the applicable exclusion amount as the sum of the basic exclusion amount of \$5,000,000 (as increased for inflation) and the deceased spousal unused exclusion amount. Section 2056(a) provides that, except as limited for certain terminable interests, the value of the decedent's taxable estate is determined by deducting from the value of the gross estate the value of all interests in property passing from the decedent to the surviving spouse (estate tax marital deduction), assuming all requirements for that deduction are satisfied.

Section 2501 imposes a gift tax for each calendar year on the transfer of property by gift during such calendar year by any individual. Section 2502 provides that the tax imposed by § 2501 for each calendar year is an amount equal to the excess of (1) a tentative tax, computed under § 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over (2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods. Under section 2505(a), in the case of a citizen or resident of the United States, a credit is allowed against the tax imposed by § 2501 for each calendar year in an amount equal to (1) the applicable credit amount in effect under § 2010(c) that would apply if the donor died at the end of the calendar year, reduced by (2) the sum of the amounts allowable as a credit to the individual under § 2505 for all preceding calendar periods. Section 2523(a) provides that, when a donor transfers an interest in property by gift to a donee who is then the donor's spouse, the amount of the donor's taxable gifts for that calendar year is reduced by the total value of such gifts to the donor's spouse (gift tax marital deduction), assuming that the other requirements for that deduction are satisfied.

For example, when a married individual (A) makes a gift or bequest to A's

spouse (B), A is entitled to claim a gift or estate tax marital deduction for the gift or bequest under § 2523 or § 2056 if the requirements of those sections are satisfied. Because of this marital deduction, A does not have to use any of A's applicable exclusion amount to exclude that spousal transfer from tax, thus preserving A's applicable exclusion amount for other gifts and bequests. Prior to the decision in *Windsor*, if A and B were of the same sex, A was not allowed to claim the marital deduction for a transfer to B, and A's applicable exclusion amount (if any) would have been applied automatically to reduce the amount of the gift or estate tax due.

Applicable law provides that, as long as the limitations period for filing claims of credits or refunds under § 6511 has not expired, a taxpayer may file an amended Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) or a supplemental Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) to claim the marital deduction for a gift or bequest to the taxpayer's same-sex spouse and to restore the applicable exclusion amount allocated to that transfer. If the limitations period has expired, this notice allows the taxpayer to recalculate the taxpayer's remaining applicable exclusion amount as a result of recognizing the taxpayer's marriage to the taxpayer's spouse. However, once the limitations period on assessment of tax has expired, neither the value of the transferred interest nor any position concerning a legal issue (other than the existence of the marriage) related to the transfer can be changed pursuant to this notice. See §§ 2001(f), 2504(c), 6501(c)(9) and the regulations thereunder. Similarly, no credit or refund of the tax paid on that marital gift can be given once the limitations period on claims for credit or refund has expired.

In the interest of providing certainty and to ease the administrative burden on both the taxpayer and IRS, a taxpayer must recalculate the taxpayer's remaining applicable exclusion amount, in accordance with IRS forms and instructions, on a Form 709 (preferably, the first Form 709 required to be filed by the taxpayer after the issuance of this notice), on an amended Form 709 (if the limitations pe-

riod under § 6511 has not expired), or on the Form 706 for the taxpayer's estate if not reported on a Form 709. Unless a taxpayer has predeceased this notice, it is not necessary to file an amended or supplemental return solely to report the increase in available applicable exclusion amount as a result of this administrative guidance. The taxpayer should include a statement at the top of the Form 706 or Form 709 that the return is "FILED PURSUANT TO NOTICE 2017-15." Moreover, the taxpayer must attach a statement supporting the claim for the marital deduction and detailing the recalculation of the taxpayer's remaining applicable exclusion amount as directed in forms and instructions issued by the IRS. If a QTIP or QDOT election is required in order to obtain the marital deduction, a separate request for relief pursuant to § 301.9100-3 must be submitted. The IRS will provide on [www.irs.gov](http://www.irs.gov) a worksheet and instructions to the Form 706 and Form 709 to properly compute and report the recalculated applicable exclusion amount.

The provisions of this section 1 apply both to the recalculation of the remaining applicable exclusion amount of a taxpayer (whether living or deceased), as well as to the recalculation of any deceased spousal exclusion amount allowed to be included in the applicable exclusion amount of that taxpayer's surviving spouse.

While this notice allows taxpayers to recalculate their remaining applicable exclusion amount as a result of the allowance of a marital deduction, it does not extend the applicable time limits on electing to split gifts made by a spouse under § 2513. In addition, any claims for credit or refund of gift or estate tax filed after the expiration of the limitations period under § 6511 will be denied. Any unrefunded gift tax paid on a gift to a same-sex spouse, for which the limitations period under § 6511 has expired, will continue to be recognized as gift tax paid or payable for purposes of the computation of the estate tax under § 2001.

## 2. GST Exemption and Generation Assignments

Section 2601 imposes a tax on all generation-skipping transfers. Section 2611(a) provides that a "generation-skipping transfer" is a taxable distribution,

a taxable termination, or a direct skip, all of which are transfers to or for the benefit of one or more skip persons. Section 2613(a) provides that a skip person is (1) a person assigned to a generation that is two or more generations below the generation assignment of the transferor, or (2) a trust (A) if all interests in such trust are held by skip persons, or (B) if (i) there is no person holding an interest in such trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

A person's generation is determined under § 2651 based on the transferee's familial relationship to the transferor or the transferor's spouse, or if there is no such relationship, then based on the difference in age between the transferor and transferee. For purposes of the GST generation assignment rules, family members of the transferor include the transferor's spouse and each lineal descendant of a grandparent of the transferor or the transferor's spouse. The generation assignment of each family member other than a spouse is determined by comparing the number of generations between the transferee and a grandparent of the transferee (or of the transferee's spouse or former spouse) with the number of generations between that grandparent and the transferor (or the transferor's spouse or former spouse). Spouses are assigned to the same generation: an individual who has been married at any time to the transferor is assigned to the transferor's generation, and an individual who has been married at any time to a lineal descendant of a grandparent of the transferor (or of the transferor's spouse or former spouse) is assigned to the generation of that lineal descendant. Finally, a relationship by legal adoption or by the half-blood is treated as a relationship by blood.

Section 2651(d) provides that an individual who is not assigned to a generation by reason of the family relationships described in the preceding paragraph shall be assigned to a generation on the basis of the date of such individual's birth. An individual born not more than 12½ years after the date of birth of the transferor is assigned to the transferor's generation. An individual born more than 12½ years but not more than 37½ years after the trans-

feror is assigned to the first generation younger than the transferor. A new generation begins every 25 years thereafter.

Under § 2631, every individual is allowed a GST exemption amount which may be allocated by such individual to any property with respect to which such individual is the transferor.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to a trust is void to the extent that the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust. An allocation also is void if the allocation is made with respect to a trust that, at the time of the allocation, has no GST potential with respect to the transferor whose exemption was allocated. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible. Under this rule, an allocation made to a trust with one or more skip persons as beneficiaries is not void.

Prior to the decision in *Windsor*, if a married individual (A) made a gift to A's same-sex spouse (B) or to a lineal descendant of B, B and B's descendants would be assigned to a generation for GST tax purposes based upon their ages, because they had no familial relationship to A that was recognized for federal tax purposes. If those generation assignments resulted in B or any of B's descendants being skip persons, A's gift could be subject to GST tax except to the extent A allocated A's GST exemption to the gift (or to the recipient trust). One result of the *Windsor* decision, however, is that the generation assignments of B and B's lineal descendants instead are established based on their familial relationship with A by reason of A and B's marriage. Accordingly, B is in the same generation as A, so neither B nor any of B's children are skip persons, A's gifts (or transfers on death) to them are not subject to GST tax, and any of A's GST exemption allocated to such transfers (or made to a trust solely for those individuals) is void.

In light of the *Windsor* decision, the Treasury Department and the IRS conclude that any allocation of GST exemption to a transfer also is void if the transfer is a direct skip not in trust to B or to a lineal descendant of B (or such descen-

dant's spouse) who is not a skip person with regard to transfers from A.

These rules apply to allocations of a taxpayer's GST exemption made on a return filed, or by operation of law as of a date, before the issuance of this notice, whether or not the limitations period on claims for credits or refunds under § 6511 has expired. This notice also permits a taxpayer to reduce his or her GST exemption allocated to transfers that were made to or for the benefit of transferees whose generation assignment is changed as a result of the *Windsor* decision. This notice is limited to the recalculation of the taxpayer's GST exemption that was allocated to a transfer to (or to a trust for the sole benefit of) one or more transferees whose generation assignment for purposes of that exemption allocation should have been determined on the basis of a familial relationship as the result of the *Windsor* decision, and who therefore are non-skip persons.

In the interest of providing certainty and to ease the administrative burden on both the taxpayer and IRS, a taxpayer should recalculate (also taking into account the GST implications of any interim transfers), in accordance with IRS forms and instructions, and report such taxpayer's available GST exemption based upon that recalculation, on a Form 709 (preferably, the first Form 709 required to be filed by the taxpayer after the issuance of this notice), on an amended Form 709 (if the limitations period under § 6511 has not expired), or on the Form 706 for the taxpayer's estate if not reported on a Form 709. Unless a taxpayer has predeceased this notice, it is not necessary to file an amended or supplemental return solely to report the increase in available GST exemption as a result of this notice. Chapter 13 of the Code, and the regulations thereunder, shall apply to the allocation of a taxpayer's newly recalculated GST exemption. A request for relief under § 301.9100-3 is not required. Rather, the taxpayer should include a statement at the top of the Form 706 or Form 709 that the return is "FILED PURSUANT TO NOTICE 2017-15." Moreover, the taxpayer should attach a statement that the taxpayer's allocation of GST exemption in a prior year is void pursuant to this notice and a copy of the computation of the

resulting exemption allocation(s) and the amount of exemption remaining available to that taxpayer. The IRS will provide on [www.irs.gov](http://www.irs.gov) a worksheet and instructions to the Form 706 and Form 709 to be used to properly recalculate the remaining exemption amount.

Notwithstanding the recalculation of GST exemption under this notice, a claim for a credit or refund resulting from this notice will be denied if the claim is not filed within the applicable period of limitations under § 6511.

## DRAFTING INFORMATION

The principal authors of this notice are Juli Ro Kim and Mayer Samuels of the Office of Associate Chief Counsel (Pass-throughs & Special Industries). For further information regarding this notice, contact Ms. Kim or Mr. Samuels at (202) 317-6859 (not a toll-free number).

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26 CFR 601.601: Rules and regulations.(Also: §§ 141, 145, 1.141-3, 1.145-2)

## Rev. Proc. 2017-13

### SECTION 1. PURPOSE

This revenue procedure provides safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under § 141(b) of the Internal Revenue Code or cause the modified private business use test for property financed with qualified 501(c)(3) bonds under § 145(a)(2)(B) to be met. This revenue procedure modifies, amplifies, and supersedes Rev. Proc. 2016-44, 2016-36 IRB 316, to address certain types of compensation, the timing of payment of compensation, the treatment of land, and methods of approval of rates. Sections 2.11 through 2.14 of this revenue procedure generally describe the modifications and amplifications made to Rev. Proc. 2016-44 by this revenue procedure.

### SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private

activity bond that is not a qualified bond (within the meaning of § 141). Section 141(a) provides that the term “private activity bond” means any bond issued as part of an issue (1) that meets the private business use test and private security or payment test, or (2) that meets the private loan financing test.

.02 Section 141(b)(1) provides generally that an issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Section 141(b)(6) defines “private business use” as use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, any activity carried on by a person other than a natural person must be treated as a trade or business.

.03 Section 1.141-3(a)(1) of the Income Tax Regulations provides, in part, that the 10 percent private business use test of § 141(b)(1) is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person. For this purpose, the use of financed property is treated as the direct use of proceeds. Section 1.141-3(a)(2) provides that, in determining whether an issue meets the private business use test, it is necessary to look at both indirect and direct use of proceeds. Proceeds are treated as used in the trade or business of a nongovernmental person if a nongovernmental person, as a result of a single transaction or a series of related transactions, uses property acquired with the proceeds of an issue.

.04 Section 1.141-3(b)(1) provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user as a result of ownership; actual or beneficial use of property pursuant to a lease, a management contract, or an incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

.05 Section 1.141-3(b)(3) provides generally that the lease of financed prop-

erty to a nongovernmental person is private business use of that property. For this purpose, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. Section 1.141-3(b)(3) further provides that, in determining whether a management contract is properly characterized as a lease, it is necessary to consider all the facts and circumstances, including the following factors: (1) the degree of control over the property that is exercised by a nongovernmental person; and (2) whether a nongovernmental person bears the risk of loss of the financed property.

.06 Section 1.141-3(b)(4)(i) provides generally that a management contract with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. A management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operations of the facility. Section 1.141-3(b)(4)(iv) provides generally that a management contract with respect to financed property results in private business use of that property if the service provider is treated as the lessee or owner of financed property for federal income tax purposes.

.07 Section 1.141-3(b)(4)(ii) defines “management contract” as a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion, or any function, of a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract.

.08 Section 1.141-3(b)(4)(iii) provides that the following arrangements generally are not treated as management contracts that give rise to private business use: (A) contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing, or sim-

ilar services); (B) the mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services if those privileges are available to all qualified physicians in the area, consistent with the size and nature of the hospital's facilities; (C) a contract to provide for the operation of a facility or system of facilities that consists primarily of public utility property, if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and (D) a contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

.09 Section 141(e) provides, in part, that the term "qualified bond" includes a qualified 501(c)(3) bond if certain requirements stated therein are met. Section 145(a) provides generally that "qualified 501(c)(3) bond" means any private activity bond issued as part of an issue if (1) all property that is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and (2) such bond would not be a private activity bond if (A) 501(c)(3) organizations were treated as governmental units with respect to their activities that do not constitute unrelated trades or businesses, determined by applying § 513(a), and (B) § 141(b)(1) and (2) were applied by substituting "5 percent" for "10 percent" each place it appears and by substituting "net proceeds" for "proceeds" each place it appears. Section 1.145-2 provides that, with certain exceptions and modifications, §§ 1.141-0 through 1.141-15 apply to § 145(a).

.10 Rev. Proc. 2016-44 provides safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under § 141(b) or cause the modified private business use test for property financed with qualified 501(c)(3) bonds under § 145(a)(2)(B) to be met. Rev. Proc. 2016-44 modified and superseded Rev. Proc. 97-13, 1997-1 C.B. 632; Rev. Proc. 2001-39, 2001-2 C.B. 38; and section

3.02 of Notice 2014-67, 2014-46 I.R.B. 822.

.11 Section 5.02 of Rev. Proc. 2016-44 sets forth general financial requirements for management compensation arrangements eligible for the safe harbor. Sections 5.02(2) and 5.02(3) of Rev. Proc. 2016-44 provide that the contract must neither provide to the service provider a share of net profits nor impose on the service provider the burden of bearing any share of net losses from the operation of the managed property. Before the publication of Rev. Proc. 2016-44, previously applicable revenue procedures expressly treated certain types of compensation, including capitation fees, periodic fixed fees, and per-unit fees (as defined therein), as not providing a share of net profits. Questions have arisen regarding whether these common types of compensation continue to be treated in a similar manner under Rev. Proc. 2016-44. Related questions have arisen about whether a service provider's payment of expenses of the operation of the managed property without reimbursement from the qualified user (as defined in section 4.04 of Rev. Proc. 2016-44) affects the treatment of these types of compensation. To provide continuity with the previous safe harbors, this revenue procedure clarifies that these types of compensation and certain incentive compensation will not be treated as providing a share of net profits or requiring the service provider to bear a share of net losses.

.12 Sections 5.02(2) and 5.02(3) of Rev. Proc. 2016-44 also provide that the timing of payment of compensation cannot be contingent upon net profits or net losses from the operation of the managed property. Questions have arisen about the effect of these restrictions on the timing of payment of compensation. This revenue procedure clarifies that compensation subject to an annual payment requirement and reasonable consequences for late payment (such as interest charges or late payment fees) will not be treated as contingent upon net profits or net losses if the contract includes a requirement that the qualified user will pay the deferred compensation within five years of the original due date of the payment.

.13 Section 5.03 of Rev. Proc. 2016-44 provides that the term of the contract,

including all renewal options (as defined in § 1.141-1(b)), must be no greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property. For this purpose, under Rev. Proc. 2016-44, economic life is determined in the same manner as under § 147(b), but without regard to § 147(b)(3)(B)(ii), as of the beginning of the term of contract. Section 147(b)(3)(B)(i) provides that generally land is not taken into account, but § 147(b)(3)(B)(ii) provides that if 25 percent or more of the net proceeds of any issue is to be used to finance the acquisition of land, such land shall be taken into account and treated as having an economic life of 30 years. Questions have arisen about excluding land when the cost of the land accounts for a significant portion of the managed property. This revenue procedure provides that economic life is determined in the same manner as under § 147(b) as of the beginning of the term of the contract. Thus, land will be treated as having an economic life of 30 years if 25 percent or more of the net proceeds of the issue that finances the managed property is to be used to finance the costs of such land.

.14 Section 5.04 of Rev. Proc. 2016-44 provides that the qualified user must exercise a significant degree of control over the use of the managed property. Section 5.04 of Rev. Proc. 2016-44 further provides that this requirement is met if the contract requires the qualified user to approve, among other things, the rates charged for use of the managed property. Section 5.04 of Rev. Proc. 2016-44 also provides that a qualified user may show approval of rates charged for use of the managed property by either expressly approving such rates (or the methodology for setting such rates) or by including in the contract a requirement that service provider charge rates that are reasonable and customary as specifically determined by an independent third party. Questions have arisen about the requirement to approve the rates in various circumstances in which it may not be feasible to approve each specific rate charged, such as for a physician's professional services at a § 501(c)(3) hospital or hotel room rates at a governmentally-owned hotel. This revenue procedure clarifies that a qualified

user may satisfy the approval of rates requirement by approving a reasonable general description of the method used to set the rates or by requiring that the service provider charge rates that are reasonable and customary as specifically determined by, or negotiated with, an independent third party.

### SECTION 3. SCOPE

This revenue procedure applies to a management contract (as defined in section 4.03 of this revenue procedure) involving managed property (as defined in section 4.04 of this revenue procedure) financed with the proceeds of an issue of governmental bonds (as defined in § 1.141-1(b)) or qualified 501(c)(3) bonds (as defined in § 145).

### SECTION 4. DEFINITIONS

For purposes of this revenue procedure, the following definitions apply:

.01 *Capitation fee* means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to such persons varies substantially. For example, a capitation fee includes a fixed dollar amount payable per month to a medical service provider for each member of a health maintenance organization plan for whom the provider agrees to provide all needed medical services for a specified period. A fixed periodic amount may include an automatic increase according to a specified, objective, external standard that is not linked to the output or efficiency of the managed property. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to protect the service provider against risk such as risk of catastrophic loss.

.02 *Eligible expense reimbursement arrangement* means a management contract under which the only compensation consists of reimbursements of actual and direct expenses paid by the service provider

to unrelated parties and reasonable related administrative overhead expenses of the service provider.

.03 *Management contract* means a management, service, or incentive payment contract between a qualified user and a service provider under which the service provider provides services for a managed property. A management contract does not include a contract or portion of a contract for the provision of services before a managed property is placed in service (for example, pre-operating services for construction design or construction management).

.04 *Managed property* means the portion of a project (as defined in § 1.141-6(a)(3)) with respect to which a service provider provides services.

.05 *Periodic fixed fee* means a stated dollar amount for services rendered for a specified period of time. For example, a stated dollar amount per month is a periodic fixed fee. The stated dollar amount may automatically increase according to a specified, objective external standard that is not linked to the output or efficiency of the managed property. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. Capitation fees and per-unit fees are not periodic fixed fees.

.06 *Per-unit fee* means a fee based on a unit of service provided specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program, or the qualified user. For example, a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile is a per-unit fee. Separate billing arrangements between physicians and hospitals are treated as per-unit fee arrangements. A fee that is a stated dollar amount specified in the contract does not fail to be a per-unit fee as a result of a provision under which the fee may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of the managed property. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in

an industry are objective, external standards.

.07 *Qualified user* means, for projects (as defined in § 1.141-6(a)(3)) financed with governmental bonds, any governmental person (as defined in § 1.141-1(b)) or, for projects financed with qualified 501(c)(3) bonds, any governmental person or any 501(c)(3) organization with respect to its activities which do not constitute an unrelated trade or business, determined by applying § 513(a).

.08 *Service provider* means any person other than a qualified user that provides services to, or for the benefit of, a qualified user under a management contract.

.09 *Unrelated parties* means persons other than either: (1) a related party (as defined in § 1.150-1(b)) to the service provider or (2) a service provider's employee.

### SECTION 5. SAFE HARBOR CONDITIONS UNDER WHICH MANAGEMENT CONTRACTS DO NOT RESULT IN PRIVATE BUSINESS USE

.01 *In general.* If a management contract meets all of the applicable conditions of sections 5.02 through section 5.07 of this revenue procedure, or is an eligible expense reimbursement arrangement, the management contract does not result in private business use under § 141(b) or 145(a)(2)(B). Further, under section 5.08 of this revenue procedure, use functionally related and subordinate to a management contract that meets these conditions does not result in private business use.

.02 *General financial requirements.*

(1) *In general.* The payments to the service provider under the contract must be reasonable compensation for services rendered during the term of the contract. Compensation includes payments to reimburse actual and direct expenses paid by the service provider and related administrative overhead expenses of the service provider.

(2) *No net profits arrangements.* The contract must not provide to the service provider a share of net profits from the operation of the managed property. Compensation to the service provider will not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon,

either the managed property's net profits or both the managed property's revenues and expenses (other than any reimbursements of direct and actual expenses paid by the service provider to unrelated third parties) for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. Incentive compensation will not be treated as providing a share of net profits if the eligibility for the incentive compensation is determined by the service provider's performance in meeting one or more standards that measure quality of services, performance, or productivity, and the amount and the timing of the payment of the compensation meet the requirements of this section 5.02(2).

(3) *No bearing of net losses of the managed property.*

(a) The contract must not, in substance, impose upon the service provider the burden of bearing any share of net losses from the operation of the managed property. An arrangement will not be treated as requiring the service provider to bear a share of net losses if:

(i) The determination of the amount of the service provider's compensation and the amount of any expenses to be paid by the service provider (and not reimbursed), separately and collectively, do not take into account either the managed property's net losses or both the managed property's revenues and expenses for any fiscal period; and

(ii) The timing of the payment of compensation is not contingent upon the managed property's net losses.

(b) For example, a service provider whose compensation is reduced by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep the managed property's expenses below a specified target (or one of multiple specified targets) will not be treated as bearing a share of net losses as a result of this reduction.

(4) *Treatment of certain types of compensation.* Without regard to whether the service provider pays expenses with respect to the operation of the managed property without reimbursement by the qualified user, compensation for services will not be treated as providing a share of net profits or requiring the service pro-

vider to bear a share of net losses under sections 5.02(2) and 5.02(3) of this revenue procedure if the compensation for services is: (a) based solely on a capitation fee, a periodic fixed fee, or a per-unit fee; (b) incentive compensation described in the last sentence of section 5.02(2) of this revenue procedure; or (c) a combination of these types of compensation.

(5) *Treatment of timing of payment of compensation.* Deferral due to insufficient net cash flows from the operation of the managed property of the payment of compensation that otherwise meets the requirements of sections 5.02(2) and 5.02(3) of this revenue procedure will not cause the deferred compensation to be treated as contingent upon net profits or net losses under sections 5.02(2) and 5.02(3) of this revenue procedure if the contract includes requirements that:

(a) The compensation is payable at least annually;

(b) The qualified user is subject to reasonable consequences for late payment, such as reasonable interest charges or late payment fees; and

(c) The qualified user will pay such deferred compensation (with interest or late payment fees) no later than the end of five years after the original due date of the payment.

.03 *Term of the contract and revisions.* The term of the contract, including all renewal options (as defined in § 1.141-1(b)), must not be greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property. For this purpose, economic life is determined in the same manner as under § 147(b) as of the beginning of the term of the contract. A contract that is materially modified with respect to any matters relevant to this section 5 is retested under this section 5 as a new contract as of the date of the material modification.

.04 *Control over use of the managed property.* The qualified user must exercise a significant degree of control over the use of the managed property. This control requirement is met if the contract requires the qualified user to approve the annual budget of the managed property, capital expenditures with respect to the managed property, each disposition of property that is part of the managed property, rates

charged for the use of the managed property, and the general nature and type of use of the managed property (for example, the type of services). For this purpose, for example, a qualified user may show approval of capital expenditures for a managed property by approving an annual budget for capital expenditures described by functional purpose and specific maximum amounts; and a qualified user may show approval of dispositions of property that is part of the managed property in a similar manner. Further, for example, a qualified user may show approval of rates charged for use of the managed property by expressly approving such rates or a general description of the methodology for setting such rates (such as a method that establishes hotel room rates using specified revenue goals based on comparable properties), or by requiring that the service provider charge rates that are reasonable and customary as specifically determined by, or negotiated with, an independent third party (such as a medical insurance company).

.05 *Risk of loss of the managed property.* The qualified user must bear the risk of loss upon damage or destruction of the managed property (for example, due to force majeure). A qualified user does not fail to meet this risk of loss requirement as a result of insuring against risk of loss through a third party or imposing upon the service provider a penalty for failure to operate the managed property in accordance with the standards set forth in the management contract.

.06 *No inconsistent tax position.* The service provider must agree that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the qualified user with respect to the managed property. For example, the service provider must agree not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the managed property.

.07 *No circumstances substantially limiting exercise of rights.*

(1) *In general.* The service provider must not have any role or relationship with the qualified user that, in effect, substantially limits the qualified user's ability to exercise its rights under the contract, based on all the facts and circumstances.

(2) *Safe harbor*. A service provider will not be treated as having a role or relationship prohibited under section 5.07(1) of this revenue procedure if:

(a) No more than 20 percent of the voting power of the governing body of the qualified user is vested in the directors, officers, shareholders, partners, members, and employees of the service provider, in the aggregate;

(b) The governing body of the qualified user does not include the chief executive officer of the service provider or the chairperson (or equivalent executive) of the service provider's governing body; and

(c) The chief executive officer of the service provider is not the chief executive officer of the qualified user or any of the qualified user's related parties (as defined in § 1.150-1(b)).

(3) For purposes of section 5.07(2) of this revenue procedure, the phrase "service provider" includes the service provider's related parties (as defined in § 1.150-1(b)) and the phrase "chief executive officer" includes a person with equivalent management responsibilities.

.08 *Functionally related and subordinate use*. A service provider's use of a project (as defined in § 1.141-6(a)(3)) that is functionally related and subordinate to performance of its services under a management contract for managed property that meets the conditions of this section 5 does not result in private business use of that project. For example, use of storage areas to store equipment used to perform activities required under a management contract that meets the requirements of this section 5 does not result in private business use.

## SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016-44 is modified, amplified, and superseded.

## SECTION 7. DATE OF APPLICABILITY

This revenue procedure applies to any management contract that is entered into on or after January 17, 2017, and an issuer may apply this revenue procedure to any management contract that was entered into before January 17, 2017. In addition,

an issuer may apply the safe harbors in Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39 and amplified by Notice 2014-67, to a management contract that is entered into before August 18, 2017 and that is not materially modified or extended on or after August 18, 2017 (other than pursuant to a renewal option as defined in § 1.141-1(b)).

## SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Johanna Som de Cerff and David White of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact David White on (202) 317-6980 (not a toll-free number).

# Updated Withholding Foreign Partnership Agreement and Withholding Foreign Trust Agreement

## Rev. Proc. 2017-21

### SECTION 1. PURPOSE

This revenue procedure sets forth the withholding foreign partnership agreement (WP agreement) and withholding foreign trust agreement (WT agreement) entered into under § 1.1441-5(c)(2)(ii) and (e)(5)(v). In general, the WP and WT agreements allow a foreign partnership or foreign trust to assume the withholding and reporting obligations under chapters 3 and 4 of the Internal Revenue Code (Code) for certain payments of U.S. source income (such as interest, dividends, and royalties) made to its direct partners, beneficiaries, or owners, and in some cases, persons holding interests in the partnership or trust through one or more foreign intermediaries or flow-through entities (indirect partners, beneficiaries, or owners). This revenue procedure also provides guidance to foreign partnerships and foreign trusts for how to apply to enter into, or renew, the WP or WT agreement.

The WP agreement and WT agreement provided in Revenue Procedure 2014-47, 2014-35 I.R.B. 393 (the 2014 WP agree-

ment and 2014 WT agreement), were scheduled to expire on December 31, 2016, but on December 30, 2016, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) announced in Revenue Procedure 2017-15, 2017-03 I.R.B. 437, that the 2014 WP and WT agreements would be treated as in effect until the updated agreements are issued in January 2017. The WP and WT agreements in this revenue procedure apply to withholding foreign partnerships (WPs) and withholding foreign trusts (WTs) with a WP or WT agreement effective on or after the date of issuance of this revenue procedure (but see section 12 of the WP or WT agreement for when the terms of the WP or WT agreement applies).

Section 2 of this revenue procedure provides background on the withholding and reporting requirements of chapters 3 and 4 of the Code. Section 3 of this revenue procedure describes the scope of this revenue procedure, and section 4 of this revenue procedure highlights changes to the WP and WT agreements. Section 5 of this revenue procedure provides the application procedures for becoming a WP or WT and for renewing a WP or WT agreement. Section 6 of this revenue procedure provides the WP agreement and section 7 of this revenue procedure provides the WT agreement. Section 8 of this revenue procedure provides the effective date; section 9 provides the effect on other documents; section 10 describes the collection of information burdens under the Paperwork Reduction Act; and section 11 provides drafting information.

### SECTION 2. BACKGROUND

.01 *Withholding and Reporting under Chapter 4 of the Code*. 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) of the Code, comprised of sections 1471 through 1474. On January 28, 2013, the Treasury Department and the IRS published final regulations (TD 9610) under chapter 4 (78 FR 5874), and, on September 10, 2013, published corrections to those final regulations (78 FR 55202) (collectively, the 2013 chapter 4 regulations). On March 6, 2014, the Treasury Department and the IRS pub-

lished temporary regulations (TD 9657) providing clarifications and modifications to the 2013 final regulations, and, on July 1, 2014, and November 18, 2014, published corrections to those temporary regulations (79 FR 37175 and 78 FR 68619, respectively) (collectively, the 2014 chapter 4 regulations). On January 6, 2017, the Treasury Department and the IRS published regulations finalizing the 2014 chapter 4 regulations with certain modifications (final chapter 4 regulations) and published temporary regulations providing additional rules under chapter 4 (temporary chapter 4 regulations) (TD 9809, 82 FR 2124).

Section 1471(a) requires a withholding agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to a foreign financial institution (FFI), unless the FFI agrees to and complies with the terms of an FFI agreement (published in Revenue Procedure 2017-16, 2017-03 I.R.B. 501 (as updated or superseded by any subsequent revenue procedure)) to satisfy the obligations specified in section 1471(b) (a participating FFI), is deemed to meet these requirements under section 1471(b) (a deemed-compliant FFI), or is treated as an exempt beneficial owner under § 1.1471-6. Section 1472(a) requires a withholding agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to a non-financial foreign entity (NFFE), other than an excepted NFFE, unless such entity provides information regarding its substantial U.S. owners or certifies that it does not have any such owners.

.02 *Withholding and Reporting under Chapter 3 of the Code.* Under sections 1441 and 1442, a withholding agent is required to deduct and withhold a tax equal to 30 percent on any payment of U.S. source fixed or determinable, annual or periodical (FDAP) income that is an amount subject to withholding (as defined in § 1.1441-2(a)) made to a foreign person. A reduced rate of withholding may apply under the Code (for example, section 1443) or an income tax treaty. Generally, a withholding agent must report the payments on Forms 1042-S, regardless of whether withholding is required. See § 1.1461-1(c).

.03 *Coordination of Withholding and Reporting Requirements under Chapters 3 and 4 of the Code.* On March 6, 2014, the Treasury Department and the IRS published temporary regulations (TD 9658, 79 FR 12726) providing rules under chapters 3, 61, and section 3406 of the Code to coordinate with the requirements provided in the 2013 and 2014 chapter 4 regulations, and, on July 1, 2014, published corrections to those temporary regulations (79 FR 37181) (collectively, the temporary coordination regulations). On January 6, 2017, the Treasury Department and the IRS published regulations finalizing certain temporary regulations under chapters 3 and 61 and sections 3406 and 6402 (final chapter 3 regulations) and published temporary regulations providing additional rules under chapter 3 (temporary chapter 3 regulations) (TD 9808, 82 FR 2046).

With respect to a payment that is subject to withholding under chapter 4, a withholding agent may credit any tax withheld under chapter 4 against its liability for any tax due with respect to the payment under chapter 3. A withholding agent is required to use a single Form 1042-S to report information required under both chapters 3 and 4 with respect to a payment subject to withholding under both chapters 3 and 4 for which a credit against the beneficial owner's chapter 3 liability, if any, may be claimed. With respect to a withholdable payment that is not subject to withholding under chapter 4 and that is an amount subject to withholding under chapter 3, a withholding agent is also required to report the applicable chapter 4 exemption code for the payment and the recipient's chapter 4 status.

.04 *Reporting Regarding Certain U.S. Persons by Foreign Partnerships and Foreign Trusts.* If a foreign partnership has U.S. partners, the foreign partnership is generally required to file Form 1065 with a Schedule K-1 to report each U.S. partner. See § 1.6031(a)-1. If a U.S. person is treated as the owner of any portion of a foreign trust under the grantor trust rules (sections 671 through 679 of the Code), the foreign trust is required to file Form 3520-A, "Annual Information Return of a Foreign Trust with a U.S. Owner," and to provide statements to each U.S. owner, as well as to each U.S. person

who is not an owner and receives a distribution. See section 6048(b); see also the Instructions for Form 3520-A.

### SECTION 3. SCOPE

.01 *Entities Eligible to Execute a WP or WT Agreement.* The WP agreement may be entered into by a foreign partnership described in § 1.1441-5(c)(2)(ii), and the WT agreement may be entered into by a foreign trust described in § 1.1441-5(e)(5)(v). With respect to an FFI, the WP or WT agreement may only be entered into by an FFI that agrees to satisfy the requirements and obligations of a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. An FFI that is a retirement fund (as defined in section 2.69 of the WP or section 2.67 of the WT agreement) or a NFFE may also apply to enter into a WP or WT agreement. A partnership or trust that is a territory financial institution (as defined in § 1.1471-1(b)(130)) may not enter into a WP or WT agreement. An FFI that is a foreign reverse hybrid entity (as defined in section 2.31 of the WP agreement) may apply to enter into a WP agreement, provided that the FFI is a participating FFI, a registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI. See section 4.03 of this revenue procedure for a summary of the requirements in the WP agreement applicable to a foreign reverse hybrid entity.

.02 *Chapter 4 Requirements with Respect to Financial Accounts.* Certain FFIs have withholding and reporting obligations under chapter 4 with respect to the FFI's financial accounts. Under § 1.1471-5(b)(1), a financial account is defined broadly, and includes, for example, non-publicly traded equity interests in an FFI that is an investment entity (as defined in § 1.1471-4(e)(4)(i)). Therefore, if a WP or WT is an FFI, WP's or WT's direct partners, beneficiaries, or owners are considered account holders for purposes of chapter 4, and the WP or WT will be required to comply with the withholding and reporting requirements with respect to such partners, beneficiaries, or owners under WP's or WT's FATCA requirements.

.03 *Assumption of Primary Chapters 3 and 4 Withholding Responsibilities.* The WP and WT agreements require a foreign

partnership or foreign trust to assume primary withholding responsibilities under chapters 3 and 4 with respect to the WP's or WT's direct partners, beneficiaries, or owners, and permit the WP or WT to assume primary withholding responsibilities under chapters 3 and 4 for certain indirect partners, beneficiaries, or owners. Section 2.09 of the WP and WT agreements defines chapter 3 to mean sections 1441, 1442, 1443, 1461, 1463, and 1464. The WP and WT agreements do not permit a WP or WT to assume primary withholding responsibility under section 1445 or 1446.

.04 *Indirect Partners, Beneficiaries, or Owners That Are U.S. Non-Exempt Recipients.* A WP or WT must act in its capacity as a WP or WT for reportable amounts that are distributed to, or included in the distributive share of, the WP's or WT's direct partners, beneficiaries, or owners. A WP or WT may also act as a WP or WT for reportable amounts that are distributed to, or included in the distributive share of, certain indirect partners, beneficiaries, or owners. Although § 1.1441-5(c)(2)(ii) and (e)(5)(v) authorize the IRS to enter into an agreement with a WP or WT to permit it to act as a withholding agent or payor under chapters 3, 4, and 61, and section 3406, the WP and WT agreements do not cover chapter 61 or section 3406. Accordingly, a WP or WT may only act as a WP or WT for an indirect partner, beneficiary, or owner that is a U.S. non-exempt recipient if the indirect partner, beneficiary, or owner is included in a chapter 4 withholding rate pool of the passthrough partner, beneficiary, or owner (as defined in section 2.56 of the WP agreement and 2.54 of the WT agreement). If the indirect partner, beneficiary, or owner that is a U.S. non-exempt recipient is not included in the passthrough partner's, beneficiary's, or owner's chapter 4 withholding rate pool, the WP or WT cannot act as a WP or WT for such indirect partner, beneficiary, or owner, and must provide specific documentation on such indirect partner, beneficiary, or owner to the withholding agent paying the reportable amount. See section 9.03 of the WP or WT agreement on the treatment of indirect partners, beneficiaries, or owners under each of these agreements.

#### **SECTION 4. SIGNIFICANT CHANGES TO THE WP AND WT AGREEMENTS**

This section summarizes the significant changes to the WP and WT agreements. Several of these changes are made to conform with the final and temporary chapter 3 regulations, the final and temporary chapter 4 regulations, Notice 2016-42, 2016-29 I.R.B. 67, and Revenue Procedure 2017-15.

.01 *Compliance Procedures (In General).* Notice 2016-42 sets forth a draft qualified intermediary (QI) agreement with proposed updates and modifications, and announced that the proposed changes to the QI compliance review are intended, with appropriate modifications, to be incorporated in the WP and WT agreements. Revenue Procedure 2017-15 sets forth the final QI agreement for QIs with a QI agreement effective on or after January 1, 2017 (the 2017 QI agreement). Accordingly, the compliance procedures in the WP and WT agreements are updated to include compliance review procedures similar to the compliance procedures in the 2017 QI agreement. For example, the WP and WT agreements allow the responsible officer to make the certification of internal controls based on, in addition to the periodic review (if required), any other reasonable processes, procedures, reviews, or certifications made by other persons that the responsible officer has determined are necessary in order to make the responsible officer's periodic certification of compliance. The WP and WT agreements also provide that the periodic review may be conducted for any calendar year covered by the certification period, rather than the most recent calendar year. If a WP or WT chooses to review the last year of the certification period for its periodic review, the WP or WT will also have an extended six-month period of time to make the certification on or before December 31 of the calendar year following the certification period (rather than July 31 of the calendar year following the certification period). The WP and WT agreements also permit certain WPs and WTs that meet the requirements in section 8.07 of the WP or WT agreement to apply for a waiver from the periodic review requirement. A WP or WT that is a NFFE

and a WP that is a member of a consolidated compliance program may not apply for a waiver from the periodic review requirement. As in the 2017 QI agreement, the WP and WT agreements require that the reviewer have sufficient independence to objectively conduct the review and cannot review his or her own work. See the preamble to the 2017 QI agreement for additional discussion of the standard of independence required of a reviewer, which also applies to the WP and WT agreements. The Appendix to the WP and WT agreements provides the certification of internal controls, waiver request, and factual information.

Under the 2014 WP and WT agreements, the initial certification period of the WP or WT agreement is the period ending on the third full calendar year that the WP or WT agreement is in effect, and subsequent certification periods are every three years following the initial certification period, other than for a WP or WT that is a NFFE or a retirement fund that does not make a pooled reporting election under section 6.02(D) of the WP or WT agreement, in which case subsequent certification periods are every six years for such NFFE or retirement fund. To make the WP and WT agreements more administrable for the IRS, the WP and WT agreements are revised to provide a three-year subsequent certification period for all WPs or WTs. In addition, the WP and WT agreements are revised to clarify that the certification period under the WP or WT agreement may not necessarily be the same as the certification period that applies to the WP's or WT's FATCA requirements as a participating FFI or registered deemed-compliant FFI. Therefore, a WP or WT may have a different review cycle and certification due date for the certification required under its FATCA requirements than under its WP or WT agreement, and should comply with the requirements for both. In the certification of internal controls in the Appendix to the WP and WT agreements, a WP or WT must certify that it has maintained its chapter 4 status during the certification period under the WP or WT agreement (not the WP's or WT's certification period under its FATCA requirements, if any).

The 2017 QI agreement allows the use of statistical sampling of a QI's accounts

for purposes of the periodic review for certain QIs, and includes a safe harbor method in Appendix II of the 2017 QI agreement for determining a statistical sample of accounts for the periodic review. Section 8.05 of the WP and WT agreements provides that if a WP or WT has more than 60 partners, beneficiaries, or owners for which the WP or WT acts for the year of the periodic review, the WP's or WT's reviewer may use statistical sampling procedures by applying the principles set forth in Appendix II of the 2017 QI Agreement in Revenue Procedure 2017-15 for its periodic review.

*.02 Consolidated Compliance Program.* In response to a comment to the 2014 WP agreement, section 8.02(C) of the WP agreement provides an allowance for consolidated compliance program for WPs, similar to the allowance for QIs. Under this option, a Compliance Entity must implement a compliance program that includes uniform practices, procedures, and systems, subject to uniform monitoring and control, with respect to all WPs in the consolidated compliance program for purposes of meeting the requirements of section 8 of the WP agreement. The Compliance Entity must agree to be jointly and severally liable for each WP's obligations under its WP agreement. A WP in a consolidated compliance program may not request a waiver of the periodic review requirement. The responsible officer of the Compliance Entity must perform a consolidated periodic review described in sections 8.04 and 8.05 of the WP agreement that includes each WP in the consolidated compliance program, but is permitted to make one certification for all WPs in the consolidated compliance program. The responsible officer of the Compliance Entity must submit factual information (described in Part IV of the Appendix to the WP agreement) for each WP. The Compliance Entity must be the sponsoring entity for chapter 4 purposes for each WP in the consolidated compliance program unless the IRS Foreign Intermediaries Program approves the use of a different entity.

A comment to Notice 2016-42 suggested that a consolidated compliance program for WPs should not include a requirement that the program have "uniform" practices, procedures, and systems

because this may be interpreted to mean "identical" practices, procedures, and systems. This comment is not adopted because "uniform" does not necessarily mean identical, but can also mean "consistent in approach," which is the intended meaning here.

*.03 Foreign Reverse Hybrid Entities.* The WP agreement is revised to include requirements for a WP that is a foreign reverse hybrid entity. Under the 2014 WP agreement, a foreign reverse hybrid entity could only act as a WP if it obtained a rider that modified the terms of the WP agreement. A foreign reverse hybrid entity is defined in section 2.31 of the WP agreement as an entity organized or incorporated outside of the United States that is treated as a corporation for U.S. federal income tax purposes but is fiscally transparent (within the meaning of § 1.894-1(d)(3)(ii)) under the laws of the country in which it is organized with respect to the items of income paid to the entity. A WP that is a foreign reverse hybrid entity must be a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. The WP agreement only allows a foreign reverse hybrid entity to obtain reduced rates of withholding under tax treaties for foreign interest holders, and requires the foreign reverse hybrid entity to comply with the requirements in section 6.03(C) of the WP agreement. Since a foreign reverse hybrid entity is treated as a corporation for U.S. tax purposes, and therefore is not required to file Form 1065 or Schedule K-1, section 6.03(C) of the WP agreement does not require a WP that is a foreign reverse hybrid entity to file a Form 1065 or Schedule K-1, and instead the WP must prepare the reconciliation statement described in section 6.03(C)(3) of the WP agreement to support the WP's allocations of U.S. source FDAP income to each partner that claims treaty benefits and issue PFIC Annual Information Statements to the extent required in section 6.03(C)(4) of the WP agreement. The reconciliation statement and the PFIC Annual Information Statements must be reviewed for accuracy as part of a WP's periodic review.

*.04 Additional Changes to Coordinate with the 2017 QI Agreement and the Temporary Chapter 3 Regulations.* The WP and WT agreements are updated consis-

tent with the 2017 QI agreement and the temporary chapter 3 regulations. For example, the WP and WT agreements require a WP or WT to obtain information regarding limitation on benefits on a treaty statement obtained from an entity that is a beneficial owner claiming treaty benefits. A transitional rule permits a WP or WT to obtain the information on limitation on benefits for certain partners, beneficiaries, or owners by January 1, 2019. In addition, section 6.02(B)(6) of the 2014 WP and WT agreements, which required specific reporting of each partnership or trust to which the joint account option is applied, is removed because section 9.01(B)(3) of the WP and WT agreements permits a WP or WT to report amounts distributed to, or included in the distributive share of, the partnership's or trust's direct partners, beneficiaries, or owners in chapter 3 reporting pools on Form 1042-S. See the preamble to the 2017 QI agreement for additional information on these changes.

*.05 Changes to Coordinate with the Temporary and Final Chapter 4 Regulations.* In section 2 of the WP and WT agreements, the definition of participating FFI is revised to cross-reference § 1.1471-1(b)(91) to incorporate the definition in the final chapter 4 regulations, and the definition of U.S. person is updated to incorporate revisions to the definition in the final chapter 4 regulations. Section 6.05(A)(2) of the WP agreement incorporates rules in the temporary chapter 4 regulations regarding account reporting requirements for participating FFIs that are partnerships. A WP that is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI) reporting a U.S. account or an account held by an owner-documented FFI on Form 8966 must report the partner's distributive share of the partnership's income or loss for the calendar year, without regard to whether any such amount is distributed to the partner during the year, and any guaranteed payments for the use of capital. The amount required to be reported with respect to a partner may be determined based on the WP's tax returns or, if the tax returns are unavailable by the due date for filing Form 8966, the WP's financial statements or any other reasonable method used by the WP for calculating the part-

ner's share of partnership income and loss by such date.

.06 *Additional Changes and Corrections.* The 2014 WP and WT agreements provide that a WP or WT that is an FFI may obtain documentary evidence in accordance with the know-your-customer (KYC) rules set forth in an attachment to the WP or WT agreement. The KYC rules that have been approved for each jurisdiction are available at <http://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules>. Because the KYC rules are readily accessible online, and because the IRS no longer provides signed copies of a WP or WT agreement, the applicable KYC rules will no longer be attached to a WP or WT agreement and references to an attachment to the WP or WT agreement are removed.

The WP and WT agreements include revisions and corrections to several definitions in section 2 of the WP or WT agreement. The definition of financial institution is revised to correct a cross-reference and conform to the definition in § 1.1471-1(b)(50), and the definition of foreign financial institution is revised to conform to the definition in § 1.1471-1(b)(47). Definitions of the terms non-qualified intermediary, nonreporting Model 1 FFI, nonreporting Model 2 FFI, and (in the WP agreement only) foreign reverse hybrid entity are added. The definition of certified deemed-compliant FFI is moved to section 2.08 of the WP or WT agreement and revised to exclude registered deemed-compliant Model 1 IGA FFIs because when the term certified deemed-compliant FFI was used in the 2014 WP and WT agreements, registered deemed-compliant Model 1 IGA FFIs were excluded by a parenthetical. The definition of registered deemed-compliant FFI is moved to section 2.63 of the WP agreement and section 2.61 of the WT agreement and revised to exclude registered deemed-compliant Model 1 IGA FFIs providing a chapter 4 withholding rate pool of U.S. payees. The inclusion of registered deemed-compliant Model 1 IGA FFIs in the definition of registered deemed-compliant FFI was unnecessary because section 6.02(C) of the 2014 WP or WT agreement already specifically identified registered deemed-compliant Model 1 IGA FFIs as a category of FFIs

that may provide a U.S. payee pool. Finally, the definition of registered deemed-compliant Model 1 IGA FFI is moved to section 2.64 of the WP agreement and section 2.62 of the WT agreement.

In the 2014 WP and WT agreements, a passthrough partner or passthrough beneficiary or owner is defined as a direct or indirect partner, beneficiary, or owner of a WP or WT that is a foreign intermediary or foreign flow-through entity, and an intermediary is defined as any person that acts as a custodian, broker, nominee, or agent with respect to a payment. However, a passthrough partner or passthrough beneficiary or owner should not include a QI that assumes primary chapters 3 and 4 withholding responsibility with respect to payments of U.S. source FDAP income or assumes primary Form 1099 reporting and backup withholding responsibility. Therefore, the definition of passthrough partner or passthrough beneficiary or owner is corrected to exclude a QI that assumes primary chapters 3 and 4 withholding responsibility with respect to payments of U.S. source FDAP income or primary Form 1099 reporting and backup withholding responsibility.

Section 3.03 of the WP and WT agreements provides the general rule for withholding on amounts subject to chapter 3 withholding and withholdable payments that are distributed to, or included in the distributive share of, a foreign partner, beneficiary, or owner. The 2014 WP and WT agreements do not provide a rule for when to report withholding on a distributive share when the withholding occurs after the due date (including extensions) for filing Forms 1042-S. Section 3.03 of the WP and WT agreements is revised to provide that if the date that is the earlier of the due date for filing Schedule K-1 (or the statement required under section 6048(b)) or the date that the Schedule K-1 (or the statement required under section 6048(b)) is actually furnished to the partner, beneficiary, or owner, is after the due date (including extensions) for filing the WP's or WT's Forms 1042-S for the calendar year, the WP or WT must withhold and report the withholding on the distributive share that relates to the prior calendar year as if it arises in the subsequent calendar year.

Under section 3.04 of the WP and WT agreements, a WP or WT may determine the amount of withholding on a distribution based on an estimate of a partner's, beneficiary's, or owner's distributive share of income, provided that the WP or WT corrects the withholding to reflect the partner's, beneficiary's, or owner's actual distributive share on the earlier of the due date for filing Schedule K-1 (or the statement required under section 6048(b)) or the date that the Schedule K-1 (or the statement required under section 6048(b)) is actually furnished to the partner, beneficiary, or owner. Section 3.04 of the WP and WT agreements is revised to require a WP or WT that makes corrections after the earlier of the due date (including extensions) for filing Forms 1042-S or the date that Forms 1042-S are actually filed to report such corrections on Forms 1042-S for the subsequent calendar year. This revision is made to ensure that a WP or WT that has already filed Forms 1042-S reports the corrections for the subsequent year rather than amending the prior year Forms 1042-S.

.07 *Effective Date and Term of the WP and WT Agreements.* In Revenue Procedure 2017-15, the Treasury Department and the IRS announced that because the updated WP and WT agreements would not be published before December 31, 2016, WPs and WTs with agreements in effect on December 31, 2016, may continue to treat those agreements as in effect until the updated WP and WT agreements are issued.

Section 12.01(A) of the WP and WT agreements provides that, in general, the effective date of a WP or WT agreement depends on when the WP or WT application is submitted. If a WP or WT applies on or before March 31 of the calendar year and is approved for WP or WT status, the WP or WT agreement will be effective January 1 of such calendar year. If a WP or WT applies after March 31 and is approved in the same calendar year and receives reportable amounts between January 1 of the year in which the application is submitted and the date of approval, the WP or WT agreement will be effective January 1 of the following calendar year. If a WP or WT that applies after March 31 does not receive any reportable amounts between January 1 of the year in which

the application is submitted and the date of approval, the WP or WT agreement will be effective on the date the WP or WT is issued a WP-EIN or WT-EIN.

A special rule for calendar year 2017 provides that if a WP or WT is approved for WP or WT status during calendar year 2017, the rules described in section 12.01(A) of the WP or WT agreement apply, except that the terms of the WP or WT agreement effective from January 1, 2017, to the date of issuance of this revenue procedure will be the terms in the WP or WT agreement in Revenue Procedure 2014-47, and the terms of the WP or WT agreement provided in this revenue procedure will apply beginning on the date of issuance of this revenue procedure.

The WP and WT agreements in sections 6 and 7 of this revenue procedure expire upon the earlier of the date the WP or WT terminates under its partnership agreement or trust instrument (as applicable) or the end of the sixth full calendar year the WP or WT agreement is in effect, unless the WP or WT agreement is terminated under section 10.02 or 10.03 of the WP or WT agreement.

## **SECTION 5. APPLICATION PROCEDURES FOR WP OR WT AGREEMENTS**

.01 *Prospective WP or WT.* An entity seeking to enter into a WP or WT agreement must submit Form 14345, “Application for Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust Status,” online through the QI/WP/WT Application and Account Management System accessible through the QI/WP/WT landing page available at <https://www.irs.gov/businesses/corporations/qualified-intermediary-system>. The application must also include any additional information and documentation requested by the IRS. The application must establish, to the satisfaction of the IRS, that the applicant has adequate resources and has established appropriate practices and procedures to comply with the terms of the WP or WT agreement. Questions regarding WP and WT applications may be sent to [lbi.fi.qiwpissues@irs.gov](mailto:lbi.fi.qiwpissues@irs.gov).

Prior to submitting Form 14345, a prospective WP or WT (other than an FFI that is a retirement fund or an NFFE that is not a sponsoring entity) must submit

Form 8957, “Foreign Account Tax Compliance Act (FATCA) Registration,” through the FATCA registration website available at [www.irs.gov/FATCA](http://www.irs.gov/FATCA) to obtain a chapter 4 status of participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or sponsoring entity. Upon completion of the registration process, a WP or WT described in the preceding sentence will be issued a GIIN (which is separate from its WP-EIN or WT-EIN) to be used to identify its chapter 4 status to withholding agents and to tax administrators, if applicable, and for FATCA reporting to the extent required under its FATCA requirements.

If the IRS approves the WP’s or WT’s application, the IRS will send the WP or WT an approval notice and the WP-EIN or WT-EIN assigned to the entity for fulfilling the requirements of a WP or WT under the WP or WT agreement. A WP or WT that has been issued a GIIN must, within 90 days of the date of approval of its WP or WT application, update its FATCA registration on the FATCA registration website to include its WP-EIN or WT-EIN.

The IRS will not enter into a WP or WT agreement with an FFI that provides for the use of documentary evidence obtained under a jurisdiction’s know-your-customer rules if it has not approved that jurisdiction’s know-your-customer practices and procedures. A list of jurisdictions with know-your-customer rules that the IRS has approved is available at <http://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules>. To request IRS approval of a jurisdiction’s know-your-customer rules, contact the KYC coordinator in the IRS Foreign Intermediaries Program at [lbi.fi.qiwpissues@irs.gov](mailto:lbi.fi.qiwpissues@irs.gov).

.02 *Existing WP or WT.* A WP or WT that has executed a WP or WT agreement and seeks to renew its WP or WT agreement must do so online through the QI/WP/WT Application and Account Management System and include the information requested for renewal of its WP or WT status. A WP or WT will retain its previously issued WP-EIN or WT-EIN for fulfilling the requirements of a WP or WT under chapters 3 and 4.

.03 *Contact Information.* For questions regarding the WP and WT application process, contact the Foreign Intermediaries Program at [lbi.fi.qiwpissues@irs.gov](mailto:lbi.fi.qiwpissues@irs.gov).

## **SECTION 6. WITHHOLDING FOREIGN PARTNERSHIP AGREEMENT**

Section 1. PURPOSE AND SCOPE

Section 2. DEFINITIONS

Section 3. WITHHOLDING RESPONSIBILITY

Section 4. DOCUMENTATION REQUIREMENTS

Section 5. WITHHOLDING FOREIGN PARTNERSHIP WITHHOLDING CERTIFICATE

Section 6. TAX RETURN AND INFORMATION REPORTING OBLIGATIONS

Section 7. ADJUSTMENTS FOR OVER- AND UNDERWITHOLDING; REFUNDS

Section 8. COMPLIANCE PROCEDURES

Section 9. CERTAIN PARTNERSHIPS AND TRUSTS AND INDIRECT PARTNERS

Section 10. EXPIRATION, TERMINATION AND DEFAULT

Section 11. MISCELLANEOUS PROVISIONS

Section 12. EFFECTIVE DATE OF AGREEMENT

The text of the WP agreement is set forth below. The IRS will not provide signed copies of the WP agreement. A reporting Model 2 FFI should interpret this Agreement by substituting the term “reporting Model 2 FFI” for “participating FFI” throughout this Agreement, except in cases where this Agreement explicitly refers to a reporting Model 2 FFI. A reporting Model 1 FFI and a nonreporting Model 2 FFI treated as a registered deemed-compliant FFI should apply this Agreement by substituting the term “reporting Model 1 FFI” or “nonreporting Model 2 FFI,” as applicable, for “registered deemed-compliant FFI” throughout this Agreement, except in cases where this Agreement explicitly refers to a reporting Model 1 FFI or nonreporting Model 2 FFI treated as a registered deemed-compliant FFI.

**WHEREAS**, WP has submitted an application in accordance with this revenue procedure to be a withholding foreign

partnership for purposes of § 1.1441-5(c)(2);

**WHEREAS**, WP and the IRS desire to enter into an agreement to establish WP's rights and obligations regarding documentation, withholding, information reporting, tax return filing, deposits, and refund procedures under sections 1441, 1442, 1443, 1461, 1471, 1472, 1474, 6031, 6302, 6402, and 6414 with respect to certain types of payments;

**WHEREAS**, WP represents that there are no legal restrictions that prohibit it from complying with the requirements of this Agreement;

**WHEREAS**, if WP is a foreign financial institution (other than a retirement fund), WP represents that it has agreed to comply with the requirements of the FFI agreement, in the case of a participating FFI (including a reporting Model 2 FFI); § 1.1471-5(f)(1) or the applicable Model 2 IGA, in the case of a registered deemed-compliant FFI (other than a reporting Model 1 FFI); or an applicable Model 1 IGA, in the case of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI beginning on the effective date of this Agreement;

**NOW, THEREFORE**, in consideration of the following terms, representations, and conditions, the parties agree as follows:

## **Section 1. PURPOSE AND SCOPE**

**Sec. 1.01. General Obligations.** When the IRS enters into a WP agreement with a foreign person, that foreign person becomes a WP. Except as otherwise provided in this Agreement, WP's obligations with respect to income distributed to, or included in the distributive shares of, its partners are governed by the Internal Revenue Code and the regulations thereunder. WP must act in its capacity as a withholding foreign partnership pursuant to this Agreement for reportable amounts that are distributed to, or included in the distributive share of, WP's direct partners. Notwithstanding the preceding sentence, this Agreement only allows a WP that is a foreign reverse hybrid entity (as defined in section 2.31 of this Agreement) to obtain reduced rates of withholding under tax treaties for foreign interest holders, and requires the foreign reverse hybrid entity to comply with the requirements of sec-

tion 6.03(C) of this Agreement. WP may also act as a withholding foreign partnership for reportable amounts that are distributed to, or included in the distributive share of, a partner, beneficiary, or owner of a passthrough partner (i.e., an indirect partner of WP) if such indirect partner is not a U.S. non-exempt recipient. Notwithstanding the preceding sentence, a WP may act as a withholding foreign partnership for an indirect partner that is a U.S. non-exempt recipient if such partner is included in the passthrough partner's chapter 4 withholding rate pool (as defined in section 2.15 of this Agreement) of U.S. payees or recalcitrant account holders provided on the FFI withholding statement (as defined in section 2.26 of this Agreement) of the passthrough partner. WP is not required to act as a withholding foreign partnership for payments that it distributes to, or includes in the distributive share of, a passthrough partner or indirect partner. With respect to an indirect partner for which WP does not (or cannot) act as a withholding foreign partnership, WP must, as part of its WP agreement, comply with the requirements of a withholding agent, as applicable to a non-withholding foreign partnership under chapters 3 and 4. WP (regardless of whether it is an FFI or NFFE) must also, pursuant to this Agreement, assume primary reporting responsibility for purposes of section 1472.

If WP is an FFI, the requirements WP has agreed to as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI apply in addition to the requirements under this Agreement except to the extent specifically modified by this Agreement. This Agreement references WP's FATCA requirements when necessary to facilitate coordination with a WP's obligations under this Agreement with respect to its partners. A participating FFI's obligations are provided in the FFI agreement, a registered deemed-compliant FFI's (other than a reporting Model 1 FFI's) obligations are provided in § 1.1471-5(f)(1) or the applicable Model 2 IGA, and the obligations of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI are provided in the applicable Model 1 IGA.

If WP is an NFFE, WP must comply with

the requirements of a withholding agent under sections 1471 and 1472, which are provided in this Agreement.

If a WP acts as a sponsoring entity on behalf of a sponsored FFI or sponsored direct reporting NFFE, it must comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity in addition to its requirements under this Agreement.

**Sec. 1.02. Parties to the Agreement.** This Agreement applies to WP and the IRS.

## **Section 2. DEFINITIONS**

For purposes of this Agreement, unless otherwise specified in this Agreement, the terms listed in this section 2 are defined herein. Any term not defined in this section has the same meaning that it has under the Code, including the income tax regulations under the Code, any applicable income tax treaty, or any applicable Model 1 IGA or Model 2 IGA with respect to WP's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

**Sec. 2.01. Account.** "Account" has the meaning given to that term in § 1.1471-1(b)(1) with respect to WP's FATCA requirements.

**Sec. 2.02. Account Holder.** "Account holder" has the meaning given to that term in § 1.1471-1(b)(2) with respect to WP's FATCA requirements with respect to an account that it maintains within the meaning of § 1.1471-5(b)(5).

**Sec. 2.03. Agreement.** "Agreement" means this Agreement between WP and the IRS, the Appendix to this Agreement and WP's application to become a withholding foreign partnership. The Appendix to this Agreement and WP's application are incorporated into this Agreement by reference.

**Sec. 2.04. Amount Subject to Chapter 3 Withholding.** An "amount subject to chapter 3 withholding" is an amount described in § 1.1441-2(a), regardless of whether such amount is withheld upon.

**Sec. 2.05. Amount Subject to Chapter 4 Withholding.** An "amount subject to chapter 4 withholding" is a withholdable payment (as defined in section 2.81 of this Agreement) for which withholding is required under chapter 4 or an amount for

which withholding was otherwise applied under chapter 4.

**Sec. 2.06. Assuming Primary Withholding Responsibility.** “Assuming primary withholding responsibility” refers to when a WP assumes primary chapters 3 and 4 withholding responsibility with respect to amounts subject to chapter 3 or 4 withholding under the terms of the WP agreement. Generally, a WP assuming primary chapters 3 and 4 withholding responsibility relieves the person who makes a payment to the WP from the responsibility to withhold. See sections 3.03 and 3.04 of this Agreement for when WP is required to withhold under this Agreement.

**Sec. 2.07. Beneficial Owner.** A “beneficial owner” has the meaning given to that term in § 1.1441-1(c)(6).

**Sec. 2.08. Certified Deemed-Compliant FFI.** “Certified deemed-compliant FFI” means an FFI described in § 1.1471-5(f)(2), and includes a nonreporting Model 1 FFI and a nonreporting Model 2 FFI that is treated as a certified deemed-compliant FFI.

**Sec. 2.09. Chapter 3.** Any reference to “chapter 3 of the Code” or “chapter 3” means sections 1441, 1442, 1443, 1461, 1463, and 1464.

**Sec. 2.10. Chapter 3 Reporting Pool.** A chapter 3 reporting pool means a reporting pool described in section 6.02(D) of this Agreement.

**Sec. 2.11. Chapter 3 Status.** The term “chapter 3 status” refers to the attributes of a payee (and a partner of WP for purposes of this Agreement) relevant for determining the rate of withholding with respect to a payment made to the payee for purposes of chapter 3.

**Sec. 2.12. Chapter 4.** Any reference to “chapter 4 of the Code” or “chapter 4” means sections 1471, 1472, 1473, and 1474.

**Sec. 2.13. Chapter 4 Reporting Pool.** A chapter 4 reporting pool means a reporting pool described in section 6.02(C) of this Agreement.

**Sec. 2.14. Chapter 4 Status.** “Chapter 4 status” means the status of a person as a U.S. person, specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory

financial institution, an excepted NFFE, or a passive NFFE.

**Sec. 2.15. Chapter 4 Withholding Rate Pool.** A “chapter 4 withholding rate pool” means a pool of payees that are nonparticipating FFIs provided on a chapter 4 withholding statement (as described in § 1.1471-3(c)(3)(iii)(B)(3)) to which a withholdable payment is allocated. The term chapter 4 withholding rate pool also means a pool of payees provided on an FFI withholding statement (as described in § 1.1471-3(c)(3)(iii)(B)(2)) to which a withholdable payment is allocated to — (A) A pool of payees consisting of each class of recalcitrant account holders described in § 1.1471-4(d)(6) (or with respect to an FFI that is a QI, a single pool of recalcitrant account holders that is not subdivided into classes of recalcitrant account holders described in § 1.1471-4(d)(6)), including a separate pool of account holders to which the escrow procedures for dormant accounts apply; or (B) A pool of payees that are U.S. persons as described in § 1.1471-3(c)(3)(iii)(B)(2).

**Sec. 2.16. Deemed-Compliant FFI.** “Deemed-compliant FFI” means a certified deemed-compliant FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI that is treated, pursuant to section 1471(b)(2) and § 1.1471-5(f), as meeting the requirements of section 1471(b). For the definition of certified deemed-compliant FFI, see section 2.08 of this Agreement. For the definition of registered deemed-compliant FFI, see section 2.63 of this Agreement. For the definition of registered deemed-compliant Model 1 IGA FFI, see section 2.64 of this Agreement.

**Sec. 2.17. Direct Partner.** A “direct partner” means a partner that is not an indirect partner (as defined in section 2.40 of this Agreement).

**Sec. 2.18. Documentary Evidence.** “Documentary evidence” means any documentation obtained under the appropriate know-your-customer rules (as defined in section 2.42 of this Agreement), or any documentary evidence described in § 1.1441-6 sufficient to establish entitlement to a reduced rate of withholding under an income tax treaty. Documentary evidence does not include a Form W-8 or

Form W-9 (or an acceptable substitute Form W-8 or Form W-9).

**Sec. 2.19. Documentation.** “Documentation” means any valid Form W-8, Form W-9 (or acceptable substitute Form W-8 or Form W-9), or documentary evidence, as defined in section 2.18 of this Agreement, including all statements or other information required to be associated with the form or documentary evidence.

**Sec. 2.20. Excepted NFFE.** “Excepted NFFE” means a person described in § 1.1471-1(b)(41).

**Sec. 2.21. Exempt Beneficial Owner.** “Exempt beneficial owner” means a person described in § 1.1471-1(b)(42) and includes any person that is treated as an exempt beneficial owner under an applicable Model 1 IGA or Model 2 IGA.

**Sec. 2.22. Exempt Recipient.** An “exempt recipient” means a person described in § 1.6049-4(c)(1)(ii) (for interest, dividends, and royalties), a person described in § 1.6045-2(b)(2)(i) (for broker proceeds), and a person described in § 1.6041-3(p) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income), for which no Form 1099 reporting is required. Exempt recipients are not exempt from reporting or withholding under chapter 3 or 4.

**Sec. 2.23. FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI.** “FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI” means:

- (A) For a participating FFI, the requirements set forth in the FFI agreement;
- (B) For a registered deemed-compliant FFI (other than a reporting Model 1 FFI), the requirements under § 1.1471-5(f)(1) or the applicable Model 2 IGA; or
- (C) For a reporting Model 1 FFI and a registered deemed-compliant Model 1 IGA FFI, the requirements under applicable foreign law to implement the applicable Model 1 IGA.

**Sec. 2.24. Financial Institution (FI).** “Financial institution” or “FI” has the meaning set forth in § 1.1471-5(e) and includes a financial institution as defined under an applicable Model 1 IGA or Model 2 IGA.

**Sec. 2.25. FFI Agreement.** “FFI agreement” means an agreement of a participat-

ing FFI described in § 1.1471-4(a) and published in Revenue Procedure 2017-16, 2017-03 I.R.B.501 (as updated or superseded by any subsequent revenue procedure).

**Sec. 2.26. FFI Withholding Statement.** An “FFI withholding statement” means a withholding statement provided by an FFI that meets the requirements of § 1.1471-3(c)(3)(iii)(B)(I) and (2).

**Sec. 2.27. Flow-Through Entity.** A “flow-through entity” is a foreign partnership described in § 301.7701-2 or 3 (other than a withholding foreign partnership), a foreign trust that is described in section 651(a) (other than a withholding foreign trust), or a foreign trust if all or a portion of such trust is treated as owned by the grantor or other person under sections 671 through 679. With respect to an item of U.S. source FDAP income for which a treaty benefit is claimed, an entity is also a flow-through entity to the extent it is treated as fiscally transparent under section 894 and the regulations thereunder.

**Sec. 2.28. Foreign Financial Institution (FFI).** “Foreign financial institution” or “FFI” has the meaning set forth in § 1.1471-5(d).

**Sec. 2.29. Foreign TIN.** A “foreign TIN” is a taxpayer identification number issued by a foreign person’s country of residence.

**Sec. 2.30. Foreign Person.** A “foreign person” is any person that is not a U.S. person and includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, and a foreign estate, as those terms are defined in section 7701 of the Code. For purposes of chapters 3 and 4, the term “foreign person” also means, with respect to a payment by a withholding agent, a foreign branch (including a foreign disregarded entity) of a U.S. person that provides a valid Form W-8IMY on which it represents that it is a QI.

**Sec. 2.31. Foreign Reverse Hybrid Entity.** A “foreign reverse hybrid entity” means an entity organized or incorporated outside of the United States that is treated as a corporation for U.S. federal income tax purposes but is fiscally transparent (within the meaning of § 1.894-1(d)(3)(ii)) under the laws of the country in which it is organized with respect to the items of income paid to the entity.

**Sec. 2.32. Form W-8.** “Form W-8” means IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals); IRS Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities); IRS Form W-8ECI, Certificate of Foreign Person’s Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States; IRS Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting; and IRS Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting, as appropriate. It also includes any acceptable substitute Form W-8 described under §§ 1.1441-1(e)(4)(vi) and 1.1471-3(c)(6)(v).

**Sec. 2.33. Form W-9.** “Form W-9” means IRS Form W-9, Request for Taxpayer Identification Number and Certification, or any acceptable substitute Form W-9 as described under § 31.3406(h)-3(c).

**Sec. 2.34. Form 1042.** “Form 1042” means IRS Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

**Sec. 2.35. Form 1042-S.** “Form 1042-S” means IRS Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding.

**Sec. 2.36. Form 1065.** “Form 1065” means IRS Form 1065, U.S. Return of Partnership Income, including Schedules K-1 associated with that form.

**Sec. 2.37. 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.

**Sec. 2.38. Form 8966.** “Form 8966” means IRS Form 8966, FATCA Report.

**Sec. 2.39. Global Intermediary Identification Number (GIIN).** “Global intermediary identification number” or “GIIN”

means the identification number that is assigned by the IRS to a participating FFI, registered deemed-compliant FFI, direct reporting NFFE, or sponsoring entity. The term also includes the identification number assigned by the IRS to a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI for the purpose of identifying itself to withholding agents.

**Sec. 2.40. Indirect Partner.** An “indirect partner” is a person that owns a partnership interest in WP through one or more passthrough partners (as defined in section 2.56 of this Agreement). For example, a person that holds an account with a foreign intermediary or an interest in a flow-through entity which intermediary or flow-through entity, in turn, is a direct partner of WP is an indirect partner. A person is an indirect partner of WP even if there are multiple tiers of intermediaries or flow-through entities between the person and WP.

**Sec. 2.41. Intermediary.** An “intermediary” means a person that, for that payment, acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether such other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.

**Sec. 2.42. Know-Your-Customer Rules.** “Know-your-customer rules” refers to the applicable laws, regulations, rules, and administrative practices and procedures governing the requirements of certain WPs that are FFIs to obtain documentation confirming the identity of WP’s direct partners. A list of jurisdictions for which the IRS has received know-your-customer information and for which the know-your-customer rules and specified documentation are acceptable is available at: <http://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules>.

**Sec. 2.43. Marketable Securities.** For purposes of this Agreement, the term “marketable securities” means those securities described in § 1.1441-6 for which a U.S. TIN or foreign TIN is not required to be provided by the beneficial owner to obtain treaty benefits.

**Sec. 2.44. 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 the applicable Model 2 IGA.

**Sec. 2.45. Non-Exempt Recipient.** A “non-exempt recipient” means a person that is not an exempt recipient under the definition in section 2.22 of this Agreement.

**Sec. 2.46. Non-Financial Foreign Entity (NFFE).** A “non-financial foreign entity” or “NFFE” means a foreign entity that is not a financial institution (including an entity that is incorporated or organized under the laws of any U.S. territory and that is not a financial institution). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.

**Sec. 2.47. Nonparticipating FFI.** A “nonparticipating FFI” means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

**Sec. 2.48. Nonqualified Intermediary.** A “nonqualified intermediary” is any intermediary that is not a qualified intermediary. A nonqualified intermediary includes any intermediary that is a foreign person unless such person enters an agreement to be a qualified intermediary and acts in such capacity. A nonqualified intermediary also includes an intermediary that is a territory financial institution (as defined in § 1.1471-1(b)(130)) unless such institution agrees to be treated as a U.S. person.

**Sec. 2.49. Nonreporting Model 1 FFI.** A “nonreporting Model 1 FFI” means a nonreporting financial institution described in Annex II of a Model 1 IGA.

**Sec. 2.50. Nonreporting Model 2 FFI.** A “nonreporting Model 2 FFI” means a nonreporting financial institution described in Annex II of a Model 2 IGA.

**Sec. 2.51. Nonwithholding Foreign Partnership (NWP).** A “nonwithholding foreign partnership” means a foreign partnership other than a withholding foreign partnership, as defined in § 1.1441-5(c)(2).

**Sec. 2.52. Nonwithholding Foreign Trust (NWT).** A “nonwithholding foreign trust” means a foreign trust (as defined in section 7701(a)(31)(B)) that is a foreign simple trust or a foreign grantor trust and that is not a withholding foreign trust (as defined in section 2.85 of this Agreement).

**Sec. 2.53. Overwithholding.** The term “overwithholding” means any amount ac-

tually withheld (determined before application of the adjustment procedures described in section 7.01 of this Agreement) from an item of income or other payment that is in excess of:

(A) The amount required to be withheld under chapter 4 with respect to such item of income or other payment, if applicable, and

(B) In the case of an amount subject to chapter 3 withholding, the actual tax liability of the beneficial owner of the income or payment to which the withheld amount is attributable, regardless of whether such overwithholding was in error or appeared correct at the time it occurred. For purposes of section 3406, the term “overwithholding” means the excess of the amount actually withheld under section 3406 over the amount required to be withheld.

**Sec. 2.54. Participating FFI.** A “participating FFI” is defined in § 1.1471-1(b)(91).

**Sec. 2.55. Partnership and Partner.** The terms “partnership” and “partner” are defined in section 7701(a)(2) of the Code and the regulations thereunder. For purposes of chapter 4, “partner” includes an account holder, as defined in section 2.02 of this Agreement, with respect to a WP that is an FFI. For purposes of a foreign reverse hybrid entity, the term “partner” includes a foreign interest holder of a foreign reverse hybrid entity, when the foreign reverse hybrid entity is treated as fiscally transparent under the tax laws of the interest holder’s country of residence (within the meaning of § 1.894-1(d)(3)(iii)) with respect to the item of income paid to the foreign reverse hybrid entity, and the interest holder itself is not treated as fiscally transparent under the tax laws of the interest holder’s country of residence.

**Sec. 2.56. Passthrough Partner.** A “passthrough partner” is a direct or indirect partner of WP that is a nonqualified intermediary, a qualified intermediary that does not assume primary chapters 3 and 4 withholding responsibility with respect to payments of U.S. source FDAP income or primary Form 1099 reporting and backup withholding responsibility, or a flow-through entity. As provided in section 2.27 of this Agreement, a withholding foreign partnership or withholding foreign

trust is not a flow-through entity and thus is not a passthrough partner.

**Sec. 2.57. Payee.** For purposes of chapter 3, a “payee” is defined in § 1.1441-1(c)(12), and for purposes of chapter 4, a “payee” means a person described in § 1.1471-3(a).

**Sec. 2.58. Payment.** A “payment” means an amount considered made to a person if that person realizes income whether or not such income results from an actual transfer of cash or other property. See § 1.1441-2(e).

**Sec. 2.59. Payor.** A “payor” is defined in § 31.3406(a)-2 and § 1.6049-4(a)(2) and generally means any person required to make an information return under chapter 61.

**Sec. 2.60. Pooled Reporting (PR) Election.** A “pooled reporting election” or “PR election” is an election to pool report chapter 3 reporting pools on Form 1042-S for chapter 3 purposes as described in section 6.02(D) of this Agreement.

**Sec. 2.61. Qualified Intermediary (QI).** A “qualified intermediary” or “QI” is a person (or branch) described in § 1.1441-1(e)(5)(ii) that has in effect an agreement with the IRS to be treated as a QI and acts as a QI. See Rev. Proc. 2017-15, 2017-03 I.R.B. 437 (as updated or superseded by any subsequent revenue procedure), for the QI Agreement.

**Sec. 2.62. Recalcitrant Account Holder.** A “recalcitrant account holder” means a person described in § 1.1471-5(g).

**Sec. 2.63. 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 and a nonreporting Model 2 FFI that is treated as a registered deemed-compliant FFI.

**Sec. 2.64. Registered Deemed-Compliant Model 1 IGA FFI.** “Registered deemed-compliant Model 1 IGA FFI” means an FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with respect to U.S. accounts as those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1), including the requirement to register with the IRS.

**Sec. 2.65. Reportable Amount.** A “reportable amount” means U.S. source FDAP income that is an amount subject to chapter 3 withholding (as defined in section 2.04 of this Agreement), U.S. source

deposit interest (as defined in section 871(i)(2)(A)), and U.S. source interest or original issue discount paid on the redemption of short-term obligations (as defined in section 871(g)(1)(B)(i)). The term does not include payments on deposits with banks and other financial institutions that remain on deposit for two weeks or less. It also does not include amounts of original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or amounts described in § 1.6049-5(b)(7), (10), or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

**Sec. 2.66. Reporting Model 1 FFI.** A “reporting Model 1 FFI” means an FFI with respect to which a foreign government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than an FFI that is treated as a nonreporting Model 1 FFI (including a registered deemed-compliant Model 1 IGA FFI) or nonparticipating FFI under an applicable Model 1 IGA.

**Sec. 2.67. Reporting Pool.** A “reporting pool” is defined in section 6.02(A) of this Agreement.

**Sec. 2.68. Responsible Officer.** A “responsible officer” of a WP means a partner of WP or an officer or agent of the general partner of WP with sufficient authority to fulfill the duties of a responsible officer as described in section 8 of this Agreement, including the requirements to periodically certify and to respond to requests by the IRS for additional information to review WP’s compliance with this Agreement.

**Sec. 2.69. Retirement Fund.** A “retirement fund” means a retirement fund or other fund that is an exempt beneficial owner described in § 1.1471-6(f) or a similar fund that qualifies as an exempt beneficial owner under an applicable Model 1 IGA or Model 2 IGA.

**Sec. 2.70. Schedule K-1.** “Schedule K-1” or “K-1” is a schedule associated with Form 1065 that shows each partner’s separate share of partnership’s income, credits, deductions, etc.

**Sec. 2.71. Sponsored Direct Reporting NFFE.** The term “sponsored direct reporting NFFE” has the meaning set forth in § 1.1472-1(c)(5).

**Sec. 2.72. Sponsored FFI.** The term

“sponsored FFI” means any entity described in § 1.1471-5(f)(1)(i)(F) (sponsored investment entities and sponsored controlled foreign corporations) or § 1.1471-5(f)(2)(iii) (sponsored, closely held investment vehicles).

**Sec. 2.73. Sponsoring Entity.** “Sponsoring entity” means (i) an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or more sponsored FFIs pursuant to § 1.1471-5(f)(1)(i)(F) or (f)(2)(iii); or (ii) an entity that registers with the IRS and agrees to perform the due diligence and reporting obligations of one or more direct reporting NFFEs pursuant to § 1.1472-1(c)(5).

**Sec. 2.74. Underwithholding.** “Underwithholding” means the excess of the amount required to be withheld under chapter 3 or 4 over the amount actually withheld.

**Sec. 2.75. Undocumented Partner.** An “undocumented partner” is a partner for whom WP does not have valid documentation.

**Sec. 2.76. U.S. Account.** A “U.S. account” is any financial account maintained by a participating FFI or registered deemed-compliant FFI that is held by one or more specified U.S. persons or U.S. owned foreign entities that such FFI reports or elects to report under the FFI agreement or § 1.1471-5(f), as applicable. A U.S. account includes, in the case of a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, a U.S. reportable account as defined in section 2.78 of this Agreement.

**Sec. 2.77. U.S. Person.** A “United States person” (or “U.S. person”) is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State of the United States (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof). An individual will not be treated as a U.S. person for purposes of this Agreement for a taxable year or any portion of a taxable year that the individual is a dual resident taxpayer (within the meaning of § 301.7701(b)-7(a)(1)) who is treated as a nonresident alien pursuant to § 301.7701(b)-7 for purposes of computing the individual’s U.S. tax liability. A U.S. person does not include an alien in-

dividual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States. For chapter 4 purposes, the term “U.S. person” or “United States person” also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in § 1.1471-5(e)(1)(iv)), or the foreign insurance company is a specified insurance company and is licensed to do business in any State of the United States.

**Sec. 2.78. U.S. Reportable Account.** A “U.S. reportable account” means a financial account maintained by a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI that such FFI reports or elects to report under the applicable domestic law for compliance with and implementation of FATCA.

**Sec. 2.79. U.S. Source FDAP.** “U.S. source FDAP” means amounts from sources within the United States that constitute fixed or determinable annual or periodical income, as defined in § 1.1441-2(b)(1).

**Sec. 2.80. U.S. TIN.** A “U.S. TIN” means a U.S. taxpayer identification number assigned under section 6109.

**Sec. 2.81. Withholdable Payment.** A “withholdable payment” means an amount described in § 1.1473-1(a).

**Sec. 2.82. Withholding Agent.** A “withholding agent” has the same meaning as set forth in § 1.1441-7(a) for purposes of chapter 3 and as set forth in § 1.1473-1(d) for purposes of chapter 4 and includes a payor (as defined in section 2.59 of this Agreement).

**Sec. 2.83. Withholding Foreign Partnership (WP).** A “withholding foreign partnership” or “WP” means a partnership, described in § 1.1441-5(c)(2), that has in effect a withholding agreement with the IRS to be treated as a withholding foreign partnership.

**Sec. 2.84. WP-EIN.** A “WP-EIN” means the employer identification number assigned by the IRS to a withholding foreign partnership. WP’s WP-EIN is only to be used when WP is acting as a WP. For example, WP must give a withholding agent its EIN (other than its WP-EIN), if any, if it is not acting as a WP (i.e., acting as a nonwithholding foreign partnership)

and a taxpayer identification number is required.

**Sec. 2.85. Withholding Foreign Trust (WT).** A “withholding foreign trust” or “WT” means a trust, described in § 1.1441–5(e)(5)(v), that has in effect a withholding agreement with the IRS to be treated as a withholding foreign trust.

### **Section 3. WITHHOLDING RESPONSIBILITY**

#### **Sec. 3.01. Chapters 3 and 4 Withholding—In General.**

##### *(A) Chapter 4 Withholding.*

WP (unless WP is a retirement fund) is a withholding agent for purposes of chapter 4 and is subject to the withholding and reporting provisions applicable to withholding agents under sections 1471 and 1472 with respect to its partners. WP is required to withhold 30 percent of any withholdable payment made after June 30, 2014, that is distributed to, or included in the distributive share of, a partner that is an FFI unless WP can reliably associate the payment (or portion of the payment) with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under § 1.1471–2(a)(4), or the payment is made under a grandfathered obligation described in § 1.1471–2(b). See § 1.1473–1(a) for the definition of a withholdable payment and the applicable exceptions to this definition. WP is also required to withhold 30 percent of any withholdable payment made after June 30, 2014, that is distributed to, or included in the distributive share of, a partner that is an NFFE unless WP can reliably associate the payment (or portion of the payment) with a certification described in § 1.1472–1(b)(1)(ii), or an exception to withholding under § 1.1472–1 applies.

If WP is a retirement fund, WP is not required to withhold under section 1471 or 1472. If WP is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), WP will satisfy its requirement to withhold under sections 1471(a) and 1472(a) with respect to direct partners that are entities by withholding on withholdable payments made to nonparticipating FFIs and recalcitrant account holders to the extent required under its FATCA requirements as a participating FFI or registered deemed-

compliant FFI. See the FFI agreement, § 1.1471–5(f), or the applicable Model 2 IGA for the withholding requirements that apply to withholdable payments made to direct partners that are individuals and are treated as recalcitrant account holders. If WP is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, WP will satisfy its requirement to withhold under section 1471(a) with respect to direct partners by withholding on withholdable payments made to nonparticipating FFIs to the extent required under its FATCA requirements as a registered deemed-compliant FFI or registered deemed-compliant Model 1 IGA FFI. WP must withhold at the time and in the manner described in sections 3.02 through 3.04 of this Agreement, which modifies other provisions describing the time and manner in which WP would otherwise be required to withhold for chapter 4 purposes.

##### *(B) Chapter 3 Withholding.*

WP is a withholding agent for purposes of chapter 3 and is subject to the withholding and reporting provisions applicable to withholding agents under chapter 3. WP must withhold 30 percent of any payment of an amount subject to chapter 3 withholding that is distributed to, or included in the distributive share of, a partner that is a foreign person unless WP can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. See section 4 of this Agreement regarding documentation requirements applicable to WP for determining whether chapter 3 withholding applies.

With respect to an amount subject to chapter 4 withholding that is also an amount subject to chapter 3 withholding, WP may credit any tax withheld under chapter 4 against its liability for any tax due under chapter 3 with respect to the payment so that no additional withholding is required on the payment for purposes of chapter 3. Nothing in chapter 4 or the regulations thereunder (including the FFI agreement) or any applicable IGA relieves WP of its requirements to withhold on an amount subject to chapter 3 withholding

to the extent required under sections 3.02 through 3.04 of this Agreement or modifies the documentation upon which WP may rely under section 4 of this Agreement for determining whether withholding under chapter 3 applies.

#### **Sec. 3.02. Primary Chapters 3 and 4 Withholding Responsibility.**

WP must assume primary chapters 3 and 4 withholding responsibility for all withholdable payments and amounts subject to chapter 3 withholding that are distributed to, or included in the distributive share of, any direct partner and any indirect partner for which it acts as a WP to the extent permissible under section 9 of this Agreement. If WP acts as a nonwithholding foreign partnership (NWP) with respect to an indirect partner, it cannot assume primary chapters 3 and 4 withholding responsibility for payments made to that indirect partner. WP is not required to withhold on amounts it pays to a QI that assumes primary withholding responsibility with respect to the payment, or to a WT, or another WP.

If WP is a participating FFI or a registered deemed-compliant FFI, it may not elect with respect to its direct partners to satisfy its obligation to withhold under chapter 4 (or the FFI agreement) on a withholdable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient by backup withholding under section 3406 as provided in § 1.1471–4(b)(3)(iii) and section 4 of the FFI agreement.

See section 6 of this Agreement regarding WP’s responsibility to report amounts subject to withholding on Form 1042–S.

**Sec. 3.03. Timing of Withholding.** WP must withhold on the date it makes a distribution to a foreign partner that includes a withholdable payment or an amount subject to chapter 3 withholding as determined under section 3.04 of this Agreement. To the extent a partner’s distributive share of income subject to withholding has not actually been distributed to the partner, WP must withhold on the partner’s distributive share on the earlier of the date that the statement required under section 6031(b) (i.e., Schedule K–1) is mailed or otherwise provided to the partner or the due date for furnishing the statement (whether or not WP is required to prepare and furnish the statement). If that date is after the due date (including

extensions) for filing WP's Forms 1042-S for the calendar year to which the distributive share relates, WP must withhold and report the withholding on the distributive share that relates to the prior calendar year as if it arises in the subsequent calendar year. See section 6.01 of this Agreement for the requirement to report the withheld tax.

**Sec. 3.04. Withholding on Distributions.**

WP may determine the amount of withholding on a distribution based on a reasonable estimate of the partner's distributive share of income subject to withholding for the year. WP must correct the estimated withholding to reflect the partner's actual distributive share on the earlier of the date that the statement required under section 6031(b) (i.e., Schedule K-1) is mailed or otherwise provided to the partner or the due date for furnishing the statement (whether or not WP is required to prepare and furnish the statement). If that date is after the earlier of the due date (including extensions) for filing WP's Forms 1042-S or the date WP actually issues Forms 1042-S for the calendar year, WP must withhold and report any adjustments required by correcting the information for the following calendar year.

**Sec. 3.05. Deposit Requirements.** WP must deposit amounts withheld under chapters 3 and 4 at the time and in the manner provided under section 6302 (see § 1.6302-2(a) or § 31.6302-1(h)).

**Section 4. DOCUMENTATION REQUIREMENTS**

**Sec. 4.01. Documentation Requirements.**

(A) *General Documentation Requirements.* Except as otherwise provided in this section 4, WP must obtain a Form W-8 or Form W-9 from every direct partner that receives a distribution or distributive share of a reportable amount. If WP is an FFI and is subject to the know-your-customer rules for documenting its partners (or subset of partners), WP may obtain documentary evidence as set forth in the "know-your-customer" rules approved by the IRS (or the documentation described in section 4.03(A)(3) of this Agreement) for the applicable jurisdiction from its direct partners rather than a Form W-8 or Form W-9, provided WP adheres to the know-your-customer rules that apply to WP with respect to the direct part-

ner from whom the documentary evidence is obtained.

WP must review and maintain documentation in accordance with this section 4 and, in the case of documentary evidence obtained from direct partners, in accordance with the know-your-customer rules approved by the IRS for the applicable jurisdiction. WP must make documentation (together with any associated withholding statements and other documents or information) available upon request for inspection by WP's external reviewer, if the performance of an external review is requested by the IRS (as described in section 8.07(D) of this Agreement). WP represents that none of the laws to which it is subject prohibits disclosure of the identity of any partner or corresponding partner information to WP's reviewer.

(B) *Coordination of Chapter 3 and Chapter 4 Documentation Requirements.* If WP is an FFI (other than a retirement fund), WP is required to perform the due diligence procedures under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for each direct partner to determine if the partner is a holder of a U.S. account (or U.S. reportable account), and to determine each direct partner that is a nonparticipating FFI and, if applicable, that is a recalcitrant account holder (or non-consenting U.S. account). See, however, the automatic termination provision of section 10.03(A) of this Agreement if WP is not in possession of valid documentation for any direct partner at any time that withholding or reporting is required. For purposes of this section 4, with respect to documenting a partner for chapter 4 purposes, documentary evidence also includes documentation or information that is publicly available to determine the chapter 4 status of the account holder to the extent permitted under an applicable IGA.

If WP is an NFFE, WP is required to document the chapter 4 status of each partner to determine if reporting or withholding applies under section 1471 or 1472 on withholdable payments distributed to, or included in the distributive share of, the partner under the requirements of § 1.1471-3(d).

If WP has determined that withholding is

not required under chapter 4, WP must obtain, unless already collected, documentation that meets the requirements of this section 4 to determine whether withholding applies under chapter 3. See also WP's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for when WP will have reason to know that a claim of chapter 4 status is unreliable or incorrect and for WP's requirements following a change in circumstances. If WP is an NFFE, see § 1.1471-3(e)(4) for when WP will have reason to know that an entity's claim of chapter 4 status is unreliable or incorrect and § 1.1471-3(c)(6)(ii)(E) for WP's requirements following a change in circumstances.

**Sec. 4.02. Documentation for Foreign Partners.**

WP may treat a partner as a foreign beneficial owner of an amount if the partner provides a valid Form W-8 (other than Form W-8IMY), or valid documentary evidence, to the extent permitted under section 4.01(A) of this Agreement, that supports the partner's status as a foreign person. WP may treat a partner that has provided documentation as entitled to a reduced rate of withholding under chapter 3 if all the requirements for a reduced rate are met and the documentation provided by the partner supports entitlement to a reduced rate of withholding and no withholding under chapter 4. Sections 4.03 through 4.06 of this Agreement describe the specific documentation requirements necessary for obtaining a reduced rate of withholding in certain circumstances.

**Sec. 4.03. Treaty Claims.** WP may not reduce the rate of withholding under chapter 3 based on a partner's claim of treaty benefits unless WP has determined that no chapter 4 withholding is required and it obtains from the partner the documentation required by section 4.03(A) of this Agreement. In addition, WP agrees to establish procedures to inform partners of the terms of the limitation on benefits provisions of a treaty (if applicable, and regardless of whether those provisions are contained in a separate article entitled Limitation on Benefits) under which the partner is claiming benefits. For partners that are entities documented by WP on or after January 1, 2017, WP is required to

obtain a Form W-8BEN-E with the appropriate limitation on benefits certification or, if WP is allowed to and obtains documentary evidence, the written certification included in the treaty statement as described in section 4.03(B) of this Agreement. For partners that are entities that were documented with documentary evidence prior to January 1, 2017, and for which treaty benefits are being claimed, WP is required to obtain the appropriate limitation on benefits statement prior to January 1, 2019.

(A) *Treaty Documentation.* The documentation required by this section 4.03(A) is as follows:

(1) A Form W-8BEN or Form W-8BEN-E on which a claim of treaty benefits is made, including, for an entity, the appropriate limitation on benefits and section 894 certifications, as provided in § 1.1441-6(b)(1) (if applicable), and a U.S. TIN or foreign TIN. A U.S. TIN or foreign TIN shall not be required, however, if the partner is a direct partner. If WP is acting as a withholding foreign partnership for an indirect partner, the indirect partner is required to have either a U.S. TIN or a foreign TIN in order to claim treaty benefits unless it is claiming treaty benefits on income from marketable securities as described in § 1.1441-6(c);

(2) Documentary evidence, as permitted under section 4.01(A) of this Agreement, that has been obtained pursuant to the know-your-customer rules that apply to the direct partner, and the direct partner, if it is an entity, has made the treaty statement (if applicable) required by section 4.03(B) of this Agreement; or

(3) The type of documentary evidence, as permitted under section 4.01(A) of this Agreement, required under § 1.1441-6 to establish entitlement to a reduced rate of withholding under a treaty, and the direct partner, if it is an entity, has made the treaty statement (if applicable) required by section 4.03(B) of this Agreement.

(B) *Treaty Statement.* The treaty statement required by an entity direct partner under this section 4.03(B) is as follows: [Name of Direct Partner] meets all provisions of the treaty that are necessary to claim a reduced rate of withholding, including any applicable limitation on benefits provisions, and derives the income within the

meaning of section 894, and the regulations thereunder, as the beneficial owner. WP is only required to obtain the treaty statement described in this section 4.03(B) from a partner that is an entity. WP shall not be required to obtain a treaty statement described in this section 4.03(B) from an individual who is a resident of an applicable treaty country or from the government, or its political subdivisions, of a treaty country. WP is required to collect and report (as required on Form 1042-S) the specific category of limitation on benefits provision from all of its entity partners, including a government (or its political subdivisions). WP may rely on a partner's claim of the specific category of limitation on benefits provision absent actual knowledge that the claim is unreliable or incorrect.

(C) A WP that is a foreign reverse hybrid entity may reduce the rate of withholding on an item of income under chapter 3 based on a partner's claim of treaty benefits only if the partner is not fiscally transparent in the jurisdiction in which it is resident with respect to the item of income, and WP (and, if applicable, any flow-through entity through which the partner holds an interest in WP) is considered to be fiscally transparent under the laws of the partner's jurisdiction with respect to the item of income. The claim of treaty benefits must be based on the tax treaty between the United States and the jurisdiction where the partner is resident. To determine when WP is treated as fiscally transparent under the laws of the partner's jurisdiction with respect to the item of income, see the rules in § 1.894-1(d)(3)(iii).

**Sec. 4.04. Documentation for International Organizations.** WP may not treat a partner as an international organization entitled to an exemption from withholding under section 892 unless WP has determined that no chapter 4 withholding is required and it obtains a Form W-8EXP (or documentary evidence as permitted under section 4.01(A) of this Agreement) from the international organization. The name provided on the documentation must be the name of an entity designated as an international organization by executive order pursuant to 22 United States Code 288 through 288f. If an international organization is not claiming benefits un-

der section 892 but under another Code exception, the provisions of section 4.02 of this Agreement apply rather than the provisions of this section 4.04.

**Sec. 4.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.**

(A) *Documentation for a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption from Withholding Under Section 892 or Section 895.* WP may not treat a partner as a foreign government or foreign central bank of issue exempt from withholding under section 892 or 895 unless WP has determined that no chapter 4 withholding is required and—

(1) WP receives from the partner a Form W-8EXP (or documentary evidence as permitted under section 4.01(A) of this Agreement) establishing that the partner is a foreign government or foreign central bank of issue;

(2) The income distributed to, or included in the distributive share of, the partner is the type of income that qualifies for an exemption from withholding under section 892 or 895; and

(3) WP does not know, or have reason to know, that the partner is a controlled commercial entity as described in section 892, that the income owned by the foreign government or foreign central bank of issue is being received from a controlled commercial entity, or that the income is from the disposition of an interest in a controlled commercial entity.

(B) *Treaty Benefits.* WP may not treat a partner as a foreign government or foreign central bank of issue entitled to a reduced rate of withholding under an income tax treaty for purposes of chapter 3 unless WP has determined that no chapter 4 withholding is required and it has valid documentation that is sufficient to obtain a reduced rate of withholding under a treaty, as described in section 4.03 of this Agreement.

(C) *Other Code Exception.* If a foreign government or foreign central bank of issue is not claiming benefits under section 892 or 895 or a reduced rate under an income tax treaty but under another Code exception (e.g., the portfolio interest exception under section 871(h) or 881(c)), the provisions of section 4.02 of this

Agreement apply rather than the provisions of this section 4.05.

**Sec. 4.06. Documentation for Foreign Tax-Exempt Organizations.** To the extent that WP determines that an amount distributed to, or included in the distributive share of, a partner is not subject to withholding under chapter 4, WP may not treat the partner as a foreign tax-exempt organization and reduce the rate of withholding or exempt the partner from withholding for purposes of chapter 3 unless WP satisfies the requirements provided in section 4.06(A), (B), or (C) of this Agreement.

(A) *Reduced Rate of Withholding Under Section 501.* WP may not treat a partner as a foreign organization described under section 501(c), and therefore exempt from withholding under chapter 3 (or, if the partner is a foreign private foundation, subject to withholding at a 4-percent rate under section 1443(b)) unless WP obtains a valid Form W-8EXP with Part IV of the form completed.

(B) *Treaty Exemption.* WP may not treat a partner as a foreign organization that is tax-exempt on an item of income pursuant to a treaty unless WP obtains valid documentation as described under section 4.03 of this Agreement that is sufficient for obtaining a reduced rate of withholding under the treaty and the documentation establishes that the partner is an organization exempt from tax under the treaty on that item of income.

(C) *Other Exceptions.* If a tax-exempt entity is not claiming a reduced rate of withholding because it is a foreign organization described under section 501(c) or under a treaty article that applies to exempt certain foreign organizations from tax, but is claiming a reduced rate of withholding under another Code or treaty exception, the provisions of section 4.02 or 4.03 of this Agreement (as applicable) shall apply rather than the provisions of this section 4.06.

**Sec. 4.07. Documentation from Passthrough Partners.** Except as otherwise provided in section 9 of this Agreement, WP shall not act as a withholding foreign partnership with respect to an amount distributed to, or included in the distributive share of, a passthrough partner. WP must forward the passthrough partner's documentation (and associated withholding

statement and documentation of indirect partners) to the withholding agent from whom WP receives a reportable amount.

**Sec. 4.08. Documentation for U.S. Exempt Recipients.** WP shall not treat a partner as a U.S. exempt recipient unless WP obtains from the partner—

(A) A valid Form W-9 on which the partner includes an exempt payee code to certify that the partner is a U.S. exempt recipient;

(B) Documentary evidence, as permitted under section 4.01(A) of this Agreement, that is sufficient to establish that the partner is a U.S. exempt recipient; or

(C) Documentary evidence, as permitted under section 4.01(A) of this Agreement, that is sufficient to establish the partner's status as a U.S. person and WP can treat the partner as an exempt recipient under the rules of §§ 1.6045-2(b)(2)(i) or 1.6049-4(c)(1)(ii), as appropriate, without obtaining documentation.

**Sec. 4.09. Documentation for U.S. Non-Exempt Recipients.** WP shall not treat a partner as a U.S. non-exempt recipient unless WP obtains a valid Form W-9 from the partner.

**Sec. 4.10. Documentation Validity.**

(A) *In General.* WP may not rely on documentation if WP has actual knowledge or reason to know that the information or certifications contained in the documentation provided by a partner is unreliable or incorrect, or that there is a change in circumstances with respect to the information or statements contained in the documentation or in WP's files (account information) pertaining to the obligation that affects the reliability of the partner's claim. See § 1.1441-1(e)(4)(ii)(D) for the definition of change in circumstances. Once WP knows, or has reason to know, that documentation provided by a partner is unreliable or incorrect to establish foreign status or residency for purposes of claiming benefits under an applicable income tax treaty, it can no longer reliably associate a payment with valid documentation unless it obtains additional documentation to establish the partner's chapter 3 status. If WP can no longer reliably associate a payment with valid documentation, it must obtain new documentation prior to the time withholding is required under section 3 of this Agreement. With respect to a withholding agent's reason to

know that a claim for treaty benefits is unreliable or incorrect based on the existence of a tax treaty, the rules in § 1.1441-6(b)(1)(ii) will apply to preexisting partners for which WP held valid documentation upon a change in circumstances or, with respect to a preexisting entity partner, when it provides a written limitation on benefits statement (as described in section 4.03(B) of this Agreement). For all partners admitted on or after January 1, 2017, this rule will apply on admission of the partner to the partnership. For purposes of this section 4.10(A), a "preexisting partner" or "preexisting entity partner" is a partner documented by WP prior to January 1, 2017, for a WP with a WP Agreement in effect prior to that date. For a WP that did not have a WP Agreement in effect prior to January 1, 2017, a "preexisting partner" or "preexisting entity partner" means a partner that was admitted to the partnership (and for which WP has valid documentation) prior to the effective date of its WP Agreement.

(B) *General Rules.*

(1) WP shall not rely on a Form W-9 if it is not permitted to do so under the rules of § 31.3406(h)-3(e) or if it has been informed by the IRS or another withholding agent that the form is unreliable or incorrect and shall not rely on a Form W-8 if it is not permitted to do so under this section 4.10.

(2) WP shall not treat documentary evidence provided by a partner as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by a partner that is a natural person and the photograph on the documentary evidence, if any, does not match the appearance of the person presenting the document.

(3) WP may not rely on documentation to reduce the withholding rate that would otherwise apply if—

(a) The partner's documentation is incomplete or contains information that is inconsistent with the partner's claim,

(b) WP has other information in the account information that is inconsistent with the partner's claim, or

(c) The documentation lacks the information necessary to establish entitlement to a reduced rate of withholding.

For example, if a direct partner that is an entity provides documentation to claim treaty benefits and the documentation establishes the direct partner's status as a foreign person and a resident of a treaty country but fails to provide the treaty statement in section 4.03(B) of this Agreement, the documentation does not establish the direct partner's entitlement to a reduced rate of withholding.

#### **Sec. 4.11. Documentation Validity Period.**

(A) *Documentation Other Than a Form W-9.* WP, as permitted under section 4.01(A) of this Agreement, may rely on valid documentary evidence obtained from direct partners in accordance with applicable know-your-customer rules as long as the documentary evidence remains valid under those rules or until WP knows, or has reason to know, that the information contained in the documentary evidence is unreliable or incorrect. However, WP may only rely on statements regarding entitlement to treaty benefits described in § 1.1441-6(c)(5)(i) or the representations described in section 4.03 of this Agreement until the validity expires under § 1.1441-1(e)(4)(ii)(A)(2). For establishing a partner's chapter 3 status (as defined in § 1.1441-1(c)(45)) or foreign status for chapter 61 purposes, WP may rely on a valid Form W-8 until its validity expires under § 1.1441-1(e)(4)(ii) and may rely on documentary evidence (other than documentary evidence obtained pursuant to applicable know-your-customer rules) until its validity expires under § 1.6049-5(c).

(B) *Form W-9.* WP may rely on a Form W-9 unless one of the conditions of § 31.3406(h)-3(e)(2)(i) through (v) applies or if it has been informed by the IRS or another withholding agent that the form is unreliable or incorrect.

#### **Sec. 4.12. Maintenance and Retention of Documentation.**

(A) *Maintaining Documentation.* WP shall maintain documentation by retaining the original documentation, a certified copy, a photocopy, a scanned copy, a microfiche, or other means that allow reproduction (provided that WP has recorded receipt of the documentation and is able to produce a hard copy). If WP is not required to retain copies of documentary evidence under its know-your-customer

rules, WP may instead retain a notation of the type of documentation reviewed, the date the documentation was reviewed, the document's identification number, if any (e.g., a passport number), and whether such documentation contained any U.S. indicia. For obligations held by a direct partner opened prior to January 1, 2001, if WP was not required under its know-your-customer rules to maintain originals or copies of documentation, WP may nevertheless rely on the information if it has complied with all other aspects of its know-your-customer rules regarding establishment of a partner's identity, it has a record that the documentation required under the know-your-customer rules was actually examined by an employee of WP or partner of WP in accordance with the know-your-customer rules, and it has no information in its possession that would require WP to treat the documentation as invalid.

(B) *Retention Period.* WP shall retain a partner's documentation obtained under this section 4 for as long as the document is relevant for the determination of WP's tax liability or reporting responsibilities under chapters 3, 4, and 61, and section 3406.

### **Section 5. WITHHOLDING FOREIGN PARTNERSHIP WITHHOLDING CERTIFICATE**

#### **Sec. 5.01. WP Withholding Certificate.**

WP agrees to furnish a withholding foreign partnership withholding certificate to each withholding agent from which it receives a reportable amount as a withholding foreign partnership. The withholding foreign partnership withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that WP is acting as a withholding foreign partnership, contains WP's WP-EIN, and provides all other information and certifications required by the form, including its WP-EIN. If WP is receiving a reportable amount that is a withholdable payment, the withholding certificate must also contain WP's chapter 4 status to the extent required, provide its GIIN (if applicable), and provide the other information and certifications required on the form. If WP is an FFI, WP must provide a GIIN on its withholding foreign partnership withholding certificate irrespective of the time the FFI

is permitted under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to obtain a GIIN. WP is not required to disclose, as part of that Form W-8IMY or its withholding statement, any information regarding the identity of its direct partners and those indirect partners for which it acts as a withholding foreign partnership to the extent permitted under section 9 of this Agreement.

If WP does not act as a withholding foreign partnership for an indirect partner, WP is required to furnish a nonwithholding foreign partnership certificate to its withholding agent. See § 1.1441-5(c)(3) for the requirements of a nonwithholding foreign partnership withholding certificate, the withholding statement associated with the withholding certificate, and the other documentation or other information for each passthrough partner and its direct and indirect partners.

#### **Sec. 5.02. Withholding Statement.**

When WP is acting as a withholding foreign partnership, WP must assume primary chapters 3 and 4 withholding responsibility as required by section 3.02 of this Agreement for reportable amounts that are distributed to, or included in the distributive shares of, its direct partners and any indirect partners for which it is acting as a withholding foreign partnership. Accordingly, WP is not required to provide a withholding statement in such circumstances. See section 9 of this Agreement, providing that WP may not act as a withholding foreign partnership for certain indirect partners that are U.S. non-exempt recipients.

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

#### **Sec. 6.01. Form 1042 Filing Requirement.**

(A) *In General.* WP shall file a return on Form 1042, whether or not WP withheld any amounts under chapter 3 or 4 of the Code, on or before March 15 of the year following any calendar year in which WP acts as a withholding foreign partnership. In addition to the information required on Form 1042 and its accompanying instructions, WP shall attach a statement setting forth the amounts of any overwithholding

or underwithholding adjustments made under sections 7.01 and 7.03 of this Agreement, and an explanation of the circumstances that resulted in the over- or underwithholding. If WP is requesting a collective refund or credit, WP shall attach the statements required by section 7.02 of this Agreement and shall comply with the procedures specified in section 7.02 of this Agreement.

(B) *Extensions for Filing Returns.* WP may request an extension of the time for filing Form 1042, or any of the information required to be attached to the form, by submitting Form 7004, Application for Automatic Extension of Time to File Certain Business Income, Tax, Information, and Other Returns, on or before the due date of the return.

**Sec. 6.02. Form 1042-S Reporting.**

(A) *In General.* WP must file Form 1042-S for each partner for whom it acts as a withholding foreign partnership and for whom WP distributes, or in whose distributive share is included, a reportable amount unless WP is permitted under sections 6.02(C) and (D) of this Agreement to report in pools (reporting pools). With respect to its direct partners, WP must file Forms 1042-S in the manner required by the regulations under chapters 3 and 4 for amounts distributed to, or included in the distributive share of, its partners (or in the case of a participating FFI, pursuant to its FATCA requirements as a participating FFI) and the instructions to the form, including any requirement to file the forms magnetically or electronically. Any Form 1042-S required to be filed by this section 6 shall be filed on or before March 15 following the calendar year in which withholding, if any, was required under section 3.02 of this Agreement. WP may request an extension of time to file Forms 1042-S by submitting Form 8809, Application for Extension of Time to File Information Returns, (or other superseding form) by the due date of Forms 1042-S in the manner required by (and to the extent permitted on) Form 8809.

(B) *Recipient Specific Reporting.* WP is required to file a separate Form 1042-S for amounts distributed to, or included in the distributive share of, each separate partner as described in this section 6.02(B). WP must file separate Forms 1042-S by income code, chapter 3 or 4

exemption code, recipient code, chapter 4 withholding rate pool (if applicable), and withholding rate.

(1) Unless WP has made the pooled reporting election pursuant to section 6.02(D) of this Agreement, WP must file a separate Form 1042-S for each direct partner (other than a passthrough partner) to whom WP distributes, or whose distributive share includes, an amount subject to chapter 3 withholding that is either not a withholdable payment or is a withholdable payment for which no chapter 4 withholding is required.

(2) WP must file a separate Form 1042-S for each partner that is a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust to whom WP distributes, or whose distributive share includes, an amount subject to withholding under chapters 3 or 4, regardless of whether such partner is a direct or indirect partner of WP.

(3) WP must file a separate Form 1042-S for each passthrough partner that is a non-qualified intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and to whom WP distributes, or whose distributive share includes, an amount subject to chapter 4 withholding allocable to such FFI's chapter 4 withholding rate pools of recalcitrant account holders, nonparticipating FFIs, and reportable amounts allocable to U.S. payees, if applicable, regardless of whether such FFI is a direct or indirect partner of WP when WP applies section 9.03 of this Agreement.

(4) WP must file a separate Form 1042-S for each passthrough partner that is a non-qualified intermediary or flow-through entity that is not described in section 6.02(B)(3) of this Agreement (other than a nonparticipating FFI), and to whom WP distributes, or whose distributive share includes, an amount subject to chapter 4 withholding allocable to such passthrough partner's chapter 4 withholding rate pool of payees that are nonparticipating FFIs, regardless of whether such passthrough partner is a direct or indirect partner of WP when WP applies section 9.03 of this Agreement.

(5) WP must file a separate Form 1042-S for each partner of WP that is a partnership or trust to which WP applies the

agency option under section 9.02 of this Agreement and to whom WP distributes, or whose distributive share includes, an amount subject to chapter 4 withholding that is allocable to the partnership or trust's chapter 4 withholding rate pool of payees that are nonparticipating FFIs or to whom WP distributes, or whose distributive share includes, an amount subject to chapter 3 withholding that is either not a withholdable payment or is a withholdable payment for which no chapter 4 withholding is required and that is allocable to such partnership's or trust's chapter 3 withholding rate pools.

(6) WP must file a separate Form 1042-S for each foreign account holder (or interest holder) of a passthrough partner that is a nonparticipating FFI that receives a payment on behalf of an exempt beneficial owner (regardless of whether the passthrough partner is a direct or indirect partner of WP) to the extent WP can reliably associate such amounts with valid documentation from such passthrough partner as to the portion of the payment allocable to one or more exempt beneficial owners. In addition, WP must file separate Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a passthrough partner that is described in the preceding sentence and that is a direct or indirect partner, beneficiary, or owner of a partnership or trust to which WP applies the agency option.

(7) WP must file a separate Form 1042-S for each foreign account holder (or interest holder) of a passthrough partner to whom WP distributes, or whose distributive share includes, an amount subject to chapter 3 withholding that is either not a withholdable payment or is a withholdable payment for which no chapter 4 withholding is required to the extent WP can reliably associate such amounts with valid documentation from an account holder (or interest holder) that is not itself a non-qualified intermediary or flow-through entity when WP applies section 9.03 of this Agreement. In addition, WP must file a separate Form 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity (to which WP does not apply the agency option) that is described in the preceding sentence and that is a direct or indirect account holder (or

interest holder) of a partnership or trust to which WP applies the agency option.

(8) If WP is an NFFE, WP must file a separate Form 1042-S for each direct partner that establishes its status as a passive NFFE but fails to provide the information regarding its owners as required under § 1.1471-3(d)(12)(iii).

*(C) Chapter 4 Reporting Pools.*

If WP is an FFI, WP shall report on Form 1042-S amounts subject to chapter 4 withholding that it distributes to, or includes in the distributive share of, its direct partners consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. A separate Form 1042-S shall be filed for each type of chapter 4 reporting pool. A chapter 4 reporting pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S, that is allocable to a chapter 4 withholding rate pool consisting of payees that are nonparticipating FFIs or recalcitrant account holders. WP must report recalcitrant account holders in pools based upon their particular class described in § 1.1471-4(d)(6), with a separate Form 1042-S issued for each such pool. See section 9 of this Agreement for when a WP may include certain indirect partners in its chapter 4 reporting pools.

If WP is a participating FFI or registered deemed-compliant FFI (including for this purpose a reporting Model 1 IGA FFI), WP may report in a chapter 4 withholding rate pool of U.S. payees reportable amounts that are distributed to, or included in the distributive share of, a direct partner that is a U.S. person, provided that WP reports such partner as a U.S. account (or U.S. reportable account) under its applicable FATCA requirements as a participating FFI, registered deemed-compliant FFI, reporting Model 1 FFI, or registered deemed-compliant Model 1 IGA FFI. WP shall include in its U.S. payee pool reportable amounts that are distributed to, or included in the distributive share of, a direct partner that is a U.S. person when WP either reports such partner as a U.S. account (or U.S. reportable account) pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI; or reports

such partner as a recalcitrant account holder (or non-consenting U.S. account) provided that WP is not required to withhold on such partner pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. See, however, the automatic termination provision of section 10.03(A) of this Agreement if WP is not in possession of valid documentation for any direct partner at any time that withholding or reporting is required.

If WP is an NFFE, WP shall report amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are distributed to, or included in the distributive share of, direct partners of WP that are nonparticipating FFIs in a chapter 4 reporting pool of nonparticipating FFIs.

*(D) Chapter 3 Reporting Pools.*

WP may elect to perform pool reporting (PR election) for an amount subject to chapter 3 withholding that either is not a withholdable payment or is a withholdable payment for which no chapter 4 withholding is required and that WP distributes to, or includes in the distributive share of, a foreign direct partner (other than a passthrough partner, withholding foreign partnership, or withholding foreign trust). A separate Form 1042-S shall be filed for each chapter 3 reporting pool. A chapter 3 reporting pool is a payment of a single type of income that falls within a particular withholding rate, chapter 3 exemption code and, if the payment is a withholdable payment, a chapter 4 exemption code as determined on Form 1042-S and its accompanying instructions. WP may use a single chapter 3 pool reporting code (e.g., WP- withholding rate pool-general) for all reporting pools except for amounts paid to foreign tax-exempt recipients, for which a separate chapter 3 pool reporting code (e.g., WP- withholding rate pool- exempt organization) must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to chapter 3 withholding and is not liable to tax in its jurisdiction of residence because it is a charitable organization, a pension fund, or a foreign government. See section 9 of this Agreement for when a WP may include certain indirect partners in its chapter 3 reporting pools.

If WP has made the PR election pursuant to this section 6.02(D), WP is not required to file Forms 1042-S for amounts distributed to, or included in the distributive share of, each separate direct partner for whom such reporting would otherwise be required. Instead, WP shall file a separate Form 1042-S for each reporting pool. However, see section 7.02 of this Agreement for the requirement for WP to provide a Form 1042-S to a partner if requested. Once made, the PR election is effective for the entire term of this Agreement beginning on the effective date of the Agreement and ending on the date of its expiration or termination under section 10 of the Agreement. WP must make a new election for each renewal term of this Agreement. If WP makes the PR election, WP cannot revoke it prior to the end of the term for which WP has made the PR election unless WP obtains consent from the IRS to revoke such election. WP may request IRS consent by contacting the IRS at the address specified in section 11.06 of this Agreement. If WP did not make the PR election at the time this Agreement was executed, then WP may make a PR election only by contacting the IRS at the address specified in section 11.06 of this Agreement.

**Sec. 6.03. Form 1065 Filing Requirement.**

*(A) General Rule.* If WP is required to file Form 1065 and Schedules K-1 under § 1.6031(a)-1, then WP shall file Form 1065 and Schedules K-1 in accordance with the regulations and the instructions for the form as modified by section 6.03(B) or (C) of this Agreement.

*(B) Modified Filing Obligations.* If WP has U.S. source income, WP may avail itself of the modified obligations described in section 6.03(B)(1) or (2) of this Agreement, if, in addition to satisfying the requirements of section 6.03(B)(1) or (2) of this Agreement, none of this income is attributable to a permanent establishment inside the United States, none of this income is effectively connected with a trade or business within the United States, and WP would not otherwise be required to report to any partner a specially allocated item on Schedule K-1.

*(1)* WP is not required to file a Form 1065 provided that WP has no direct or indirect

partners that are U.S. persons at any time during WP's taxable year.

(2) WP is required to file a Form 1065, but is not required to file Schedules K-1 for any partners other than its direct U.S. partners and its passthrough partners (whether U.S. or foreign) through which indirect U.S. partners hold an interest in WP. Schedules K-1 that are not excepted from the filing requirement under this section 6.03(B)(2) must contain the same information required of a U.S. partnership under § 1.6031(a)-1(a).

(C) *Foreign Reverse Hybrid Entities.* If WP is an FFI that is a foreign reverse hybrid entity, WP is not required to file Form 1065 and Schedules K-1, and instead WP must satisfy the requirements in sections 6.03(C)(1) through (5) of this Agreement.

(1) WP is a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

(2) WP files Form 1120-F for each taxable year to report income effectively connected with a U.S. trade or business (ECI) (if any).

(3) With respect to each calendar year, WP prepares a statement supporting its allocations of U.S. source FDAP income for the year to each partner that claims benefits under an income tax treaty ("Reconciliation Statement"). The Reconciliation Statement shall be prepared by the due date (including extensions) for filing WP's Forms 1042 and 1042-S for the calendar year. The Reconciliation Statement must be retained for six years and provided to the IRS upon request, and must be reviewed by the reviewer for accuracy as part of the periodic review under sections 8.04 and 8.05 of this Agreement. The Reconciliation Statement must include the following information:

(i) The total amount of non-ECI U.S. source FDAP income that is received by WP during the year and, of such amount, the portion that is included in the distributive share of each partner that is a U.S. person; each foreign partner that claims benefits under an income tax treaty with respect to such income; and all other partners in WP (in the aggregate);

(ii) For each partner described in section 6.03(C)(3)(i) of this Agreement, the amount of withholding applied by WP to the distribution or distributive share of the

amount of non-ECI U.S. source FDAP allocated to such partner for the year; and (iii) Identification of any allocation of non-ECI U.S. source FDAP income to a partner claiming benefits under an income tax treaty with respect to such income in a ratio different than the ratio for allocating income or loss generally to such partner under WP's partnership agreement and identifying information with respect to each such partner that would be provided on Schedule K-1 if WP were required to provide Schedule K-1 under § 1.6031(a)-1 for such partner.

(4) If WP is a passive foreign investment company (PFIC), WP must issue a PFIC Annual Information Statement (described in § 1.1295-1(g)(1)) each year to each U.S. person that is a shareholder (as defined in § 1.1295-1(j)) of the PFIC that has made an election to treat WP as a qualified electing fund under section 1295(b). WP shall retain a copy of each PFIC Annual Information Statement for six years and provide each such statement to the IRS upon request. Each PFIC Annual Information Statement must be reviewed by the reviewer for accuracy as part of the periodic review under sections 8.04 and 8.05 of this Agreement.

(5) WP may not reduce the rate of withholding under chapter 3 based on a partner's claim of treaty benefits unless WP obtains from the partner the documentation required under section 4.03 of this Agreement.

**Sec. 6.04. Retention of Returns.** WP shall retain Forms 1042 and 1065 for the period of the applicable statute of limitations on assessments and collection under the Code.

**Sec. 6.05. FATCA U.S. Account Reporting.**

(A) *WP that is an FFI.*

(1) *In general.* If WP is an FFI, WP is required to report each U.S. account (or, in the case of an FFI that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, each U.S. reportable account) that it maintains consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. If WP is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), WP must report its U.S.

accounts on Form 8966 in the time and manner specified under its FATCA requirements as a participating FFI or registered deemed-compliant FFI, except to the extent WP is reporting under § 1.1471-4(d)(5) on Form 1099 with respect to its U.S. accounts. If WP is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, WP must report each U.S. reportable account as required under the applicable Model 1 IGA.

(2) *Reporting payments made to partners on Form 8966.* Beginning with reporting with respect to calendar year 2017, if WP is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI) reporting a U.S. account or an account held by an owner-documented FFI on Form 8966, WP must report the payments described in § 1.1471-4(d)(4)(iv)(C) (i.e., the partner's distributive share of the partnership's income or loss for the calendar year, without regard to whether any such amount is distributed to the partner during the year, and any guaranteed payments for the use of capital).

(B) *WP that is an NFFE.* If WP is an NFFE, WP shall file Forms 8966 to report withholdable payments distributed to, or included in the distributive share of, any partner that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners if the NFFE is the beneficial owner of the withholdable payment received by WP. See § 1.1471-1(b)(8) for the definition of beneficial owner. WP must report on Form 8966 in accordance with the form and its accompanying instructions.

The Form 8966 must include the name of the NFFE that is owned by a substantial U.S. owner; the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments distributed to, or included in the distributive share of, the NFFE during the calendar year; and any other information as required by the form and its accompanying instructions. If WP is acting as a sponsoring entity on behalf of a NFFE for chapter 4 purposes, WP is not required to report as described in this paragraph if WP reports the NFFE as part of WP's requirements as a sponsoring entity. See § 1.1472-1(c)

(5)(ii) for the reporting requirements of a sponsoring entity.

*(C) Form 8966 Reporting for Payees that are NFFEs.* WP shall file Form 8966 to report withholdable payments that WP distributes to, or includes in the distributive share of, a passthrough partner that provides information regarding an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA) and that is the beneficial owner of the withholdable payment received by WP when such substantial U.S. owner or controlling person is not reported under section 6.05(A) of this Agreement. WP must report on Form 8966 in the time and manner provided in § 1.1474-1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner (or controlling person that is a specified U.S. person); the name, address, and U.S. TIN of each substantial U.S. owner (or controlling person that is a specified U.S. person); the total of all withholdable payments made to the NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions.

WP is not required to report on Form 8966, however, on a withholdable payment made to a passthrough partner that is a participating FFI or registered deemed-compliant FFI that is allocated to a payee that is a passive NFFE with one or more substantial U.S. owners on an FFI withholding statement when the participating FFI or registered deemed-compliant FFI includes on the statement the certification described in § 1.1471-3(c)(3)(iii)(B)(2) (iv) (certifying that the FFI is reporting the passive NFFE as a U.S. account or U.S. reportable account in accordance with the terms of the FFI agreement or an applicable IGA), provided WP does not know or have reason to know that the certification is incorrect or unreliable. See § 1.1474-1(i)(2).

## **Section 7. ADJUSTMENTS FOR OVER- AND UNDERWITHHOLDING; REFUNDS**

**Sec. 7.01. Adjustments for Chapter 3 or 4 Overwithholding by WP.** WP may

make an adjustment for amounts paid to its partners when WP has overwithheld under chapter 3 or 4 by applying either the reimbursement procedure described in section 7.01(A) of this Agreement or the set-off procedure described in section 7.01(B) of this Agreement within the time period prescribed for those procedures.

*(A) Reimbursement Procedure.* WP may repay its partners for an amount overwithheld under chapter 3 or 4 and reimburse itself by reducing, by the amount of tax actually repaid to the partners, the amount of any subsequent deposit of tax required to be made by WP under section 3.05 of this Agreement. For purposes of this section 7.01(A), an amount that is overwithheld shall be applied in order of time (i.e., sequentially) to each of WP's subsequent deposit periods in the same calendar year to the extent that the withholding taxes required to be deposited for a subsequent deposit period exceed the amount actually deposited. An amount overwithheld in a calendar year may be applied to deposit periods in the calendar year following the calendar year of overwithholding only if—

(1) The repayment occurs before the earlier of the due date (without regard to extensions) for filing Form 1042-S for the calendar year of overwithholding or the date that the Form 1042-S is actually filed by WP with the IRS;

(2) WP states on a Form 1042-S (issued, if applicable, to the partner or otherwise to a chapter 3 or 4 reporting pool) filed by March 15 of the calendar year following the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayments; and

(3) WP states on a Form 1042, filed by March 15 of the calendar year following the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414-1.

*(B) Set-Off Procedure.* WP may repay its partners by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 or 4 to be withheld from a payment made by WP before the earlier of March 15 of the calendar year following the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on

Form 1042 or Form 1042-S for the calendar year of overwithholding, and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 or 4.

**Sec. 7.02. Collective Credit or Refund Procedures for Chapter 3 or 4 Overwithholding.** If WP has made a PR election and there has been overwithholding (as defined in section 2.53 of this Agreement) on amounts paid to WP's direct partners during a calendar year and the amount of overwithholding has not been recovered under the reimbursement or set-off procedures as described in section 7.01 of this Agreement, WP may request a credit or refund of the total amount overwithheld by following the procedures of this section 7.02. WP shall follow the procedures set forth under sections 6402 and 6414, and the regulations thereunder, to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511. If there has been overwithholding and WP does not apply for a collective refund, it must provide a Form 1042-S for the payment that was subject to the overwithholding if requested by the partner receiving the payment.

*(A) Payments for which a Collective Refund is Permitted.* Except as otherwise provided in this section 7.02, WP may use the collective refund procedure of this section 7.02 with respect to all amounts subject to chapter 3 or 4 withholding that WP has withheld under this Agreement. With respect to amounts withheld under chapter 3 or 4, WP shall not include in its collective refund claim any amounts withheld on payments made to an indirect partner or a direct account holder of WP that is a passthrough partner. Further, with respect to amounts withheld under chapter 4, if WP is a participating FFI or registered deemed-compliant FFI, WP shall not include in its collective refund claim any amounts withheld on payments made to any partner that is an account holder described in the FFI agreement or in § 1.1471-4(h)(2).

*(B) Requirements for a Collective Refund.* (1) WP may use the collective refund procedures under this section 7.02 only if WP

has not issued (and will not issue) Forms 1042-S to the partners that were subject to overwithholding and for which a collective refund claim is being made.

(2) WP must submit, together with its amended Form 1042 on which it provides a reconciliation of amounts withheld and a claim for credit or refund, a statement that includes the following information and representations—

(i) The reason(s) for the overwithholding;

(ii) WP deposited the tax for which a refund is being sought under section 6302 and WP has not applied the reimbursement or set-off procedures of §§ 1.1461-2 and 1.1474-2 to adjust the tax withheld to which the claim relates;

(iii) WP has repaid or will repay the amount for which a refund is sought to the appropriate partners;

(iv) WP retains a record showing the total amount of tax withheld, adjustments for underwithholding, and reimbursements for overwithholding as it relates to each partner and also showing the repayment (if applicable) to such partners for the amount of tax for which a refund is being sought;

(v) WP retains valid documentation that meets the requirements of chapter 3 or 4 (as applicable) to substantiate the amount of overwithholding with respect to each partner for which a refund is being sought; and

(vi) WP has not issued (and will not issue) a Form 1042-S (or such other form as the IRS may prescribe) to any partner with respect to the payments for which a refund is being sought.

**Sec. 7.03. Adjustments for Chapter 3 or 4 Underwithholding.** If WP knows that an amount should have been withheld under chapter 3 or 4 from a previous payment made to a partner and the amount was not withheld, WP may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same partner or satisfy the tax from the partner's proportionate share of assets over which WP has control. The additional withholding or satisfaction of the tax owed described in the previous sentence must be made before the due date (not including extensions) of the Form 1042 for the calendar year in which the underwithholding occurred.

**Sec. 7.04. Chapter 3 or 4 Underwith-**

**holding after Form 1042 Filed.** If, after a Form 1042 has been filed for a calendar year, WP, WP's reviewer, or the IRS determines that WP has underwithheld tax under chapter 3 or 4 for such year, WP shall file an amended Form 1042 to report and pay the underwithheld tax. WP shall pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties, at the time of filing the amended Form 1042. If WP fails to file an amended return, the IRS shall make such return under section 6020 and assess such tax under the procedures set forth in the Code.

## **Section 8. COMPLIANCE PROCEDURES**

### **Sec. 8.01. In General.**

(A) *In General.* WP must adopt a compliance program under the authority of a responsible officer or, if WP adopts a consolidated compliance program, under the authority of a responsible officer of the Compliance Entity (as described in section 8.02(C) of this Agreement). WP's compliance program must include policies, procedures, and processes sufficient for WP to satisfy the documentation, reporting, and withholding requirements of this Agreement and sufficient for the responsible officer of WP to make the certifications required under section 8.03 of this Agreement. See section 2.68 of this Agreement for the definition of responsible officer. WP must also perform or arrange for the performance of the periodic review described in section 8.04 of this Agreement to the extent required by that section. As part of the responsible officer's certification, WP must provide to the IRS the factual information as required by and referenced in sections 8.04 and 8.05 of this Agreement and in the Appendix to this Agreement. WP must also satisfy the requirements of section 8.06 of this Agreement with respect to the report of the periodic review and must comply with the IRS review referenced in section 8.08 of this Agreement.

(B) *Coordination with FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI.* As a condition for maintaining this Agreement, WP must maintain its chapter 4 status. Therefore, WP must, as part of the

compliance procedures described in this section 8, determine whether it is compliant with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

### **Sec. 8.02. Compliance Program.**

(A) *Responsible Officer.* WP must appoint an individual as the responsible officer (as defined in section 2.68 of this Agreement). The responsible officer must be identified on the QI/WP/WT Application and Accounts Management System as the WP's responsible officer, and such person may, but is not required to, be the same responsible officer as for purposes of compliance with WP's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. The responsible officer must establish a compliance program that meets the requirements of this section 8.02 and must make the periodic certifications to the IRS described in section 8.03 of this Agreement. The responsible officer of WP must be a partner of WP or an officer or agent of the general partner with sufficient authority to fulfill the duties of a responsible officer described in this section 8.02. The responsible officer (or a delegate appointed by the responsible officer) must also serve as the point of contact for the IRS for all issues related to this Agreement and for complying with IRS requests for information or additional review procedures under section 8.08 of this Agreement. References in this section 8.02 to the responsible officer include a responsible officer's designee, where appropriate.

(B) *Compliance Program.* The responsible officer must establish a program for WP to comply with the requirements of this Agreement that includes the following:

(1) *Written Policies and Procedures.* The responsible officer must ensure the drafting and updating, as necessary, of written policies and procedures sufficient for WP to satisfy the documentation, withholding, reporting, and other obligations of this Agreement. Such written policies and procedures must include a process for an employee or partner of WP to raise issues to the responsible officer that concern WP's compliance with this Agreement.

(2) *Training.* The responsible officer must

communicate such policies and procedures to persons responsible for obtaining, reviewing, and retaining a record of documentation under the requirements of section 4 of this Agreement, making distributions and allocations to partners on behalf of WP that are subject to withholding under section 3 of this Agreement, or reporting distributions or allocations to partners under section 6 of this Agreement.

(3) *Systems.* The responsible officer must ensure that systems and processes are in place that will allow WP to fulfill its obligations under this Agreement. For example, in order to fulfill WP's obligations to report on Forms 1042-S, Schedules K-1, and Forms 8966 under section 6 of this Agreement, WP must establish systems for documenting partners and for recording the information with respect to each such partner that WP is required to report under that section.

(4) *Monitoring of Business Changes.* The responsible officer must monitor business practices and arrangements that affect WP's compliance with this Agreement, including, for example, changes in WP's partners that give rise to documentation, withholding, or reporting obligations under this Agreement.

(5) *Periodic Review.* Unless WP receives a waiver (the requirements of which are described in section 8.07 of this Agreement), the responsible officer must designate a reviewer that meets the qualifications described in section 8.04(A) of this Agreement to perform the periodic review described in section 8.05 of this Agreement, to the extent required.

(6) *Certification of Internal Controls.* The responsible officer must make the certification of internal controls as described in section 8.03 of this Agreement, including ensuring that corrective actions are taken in response to any material failures (as defined in section 8.03(D) of this Agreement) of WP's compliance with this Agreement.

(C) *Consolidated Compliance Program.* The IRS, in its discretion, may permit a WP to participate in a consolidated compliance program if all the requirements in this section 8.02(C) are met.

Two or more WPs may designate an entity (the Compliance Entity) to implement a consolidated compliance program that in-

cludes uniform practices, procedures, and systems, subject to uniform monitoring and control, with respect to all WPs in the consolidated compliance program for purposes of meeting the requirements of section 8 of this Agreement. The responsible officer of the Compliance Entity must perform a consolidated periodic review described in sections 8.04 and 8.05 of this Agreement that includes each WP in the consolidated compliance program. The responsible officer of the Compliance Entity may make a single certification of internal controls under section 8.03 of this Agreement that covers all WPs in the consolidated compliance program, but must provide the factual information described in sections 8.04 and 8.05 of this Agreement and the Appendix to this Agreement separately for each WP in the consolidated compliance program.

The Compliance Entity must be the same as the sponsoring entity for chapter 4 purposes for each WP in the consolidated compliance program unless the IRS Foreign Intermediaries Program approves the use a different entity. The Compliance Entity must agree to be jointly and severally liable for the obligations and liabilities of each WP in the consolidated compliance program relating to WP's obligations under this Agreement. A WP in a consolidated compliance program may not request a waiver of the periodic review requirement described in section 8.04 of this Agreement.

**Sec. 8.03. Certification of Internal Controls by Responsible Officer.** WP's responsible officer must make the applicable certification of compliance described in either Part II.A (Certification of Effective Internal Controls) or Part II.B (Qualified Certification) of the Appendix to this Agreement and must disclose any material failures that occurred during the certification period or during any prior period if the material failure was not disclosed as part of a prior certification or written disclosure made by WP to the IRS. If the responsible officer has identified an event of default or a material failure that has not been corrected as of the date of the certification, the responsible officer cannot make the certification in Part II.A (Certification of Effective Internal Controls) and must make the certification in Part II.B (Qualified Certification) of the Ap-

pendix to this Agreement. All WPs must also complete Parts II.C through II.F of the Appendix to this Agreement.

The certification of internal controls required by this section 8.03 applies only to the internal controls related to WP's compliance with this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and does not relate to any other obligations or requirements. In making the certification required by this section 8.03, the responsible officer may rely on, in addition to the results of the periodic review (if required), any reasonable procedures, processes, reviews, or certifications made by other persons that the responsible officer has determined are necessary in order to make the certification described in this section 8.03. If the responsible officer relies on an internal or external review for this purpose (i.e., for purposes of determining whether WP has effective internal controls), the internal or external reviewer must be independent, as described in section 8.04 of this Agreement. The responsible officer must document the procedures, processes, reviews, or certifications relied upon in making the certification. WP's responsible officer (or the responsible officer of its Compliance Entity) must make the certifications of compliance in such manner as the IRS may prescribe.

(A) *Partnerships or Trusts to which WP Applies the Agency Option.* Unless WP has received a waiver of the periodic review requirement, any partnership or trust to which WP applies the agency option must provide its documentation and other information to WP for inclusion in WP's periodic review or conduct an independent periodic review and provide a written certification to WP regarding its compliance with the requirements of the agency agreement. Such certification must be available to the IRS upon a request made as part of the review described in section 8.08 of this Agreement (with a certified translation into English if the certification is not in English).

(B) *Material Failures.*

(1) *Material Failures Defined.* A material failure is generally a failure of WP to fulfill the requirements of this Agreement or its FATCA requirements as a partici-

pating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. For purposes of the certifications described in Parts II.A and II.B of the Appendix to this Agreement, a material failure is limited to the following:

(i) WP's establishing of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to WP's failure to comply with this Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(ii) WP's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of WP to take actions consistent with WP's obligations under this Agreement;

(iii) A criminal or civil penalty or sanction imposed on WP by a regulator or other governmental authority or agency with oversight over WP's compliance with the AML/KYC procedures, if applicable, to which WP is subject and that is imposed due to WP's failure to properly identify partners under the requirements of those procedures; or

(iv) A finding (including a finding noted in the reviewer's periodic review report described in section 8.06 of this Agreement) that, for one or more years covered by this Agreement, WP failed to—

(a) Withhold an amount that WP was required to withhold under chapter 3 or 4 as required under section 3 of this Agreement;

(b) Make deposits in the time and manner required by section 3.05 of this Agreement or make adequate deposits to satisfy its withholding obligations, taking into account the procedures under section 7 of this Agreement; or

(c) Report accurately on Forms 1042, 1042-S, 8966 (or similar report of U.S. reportable accounts as required under a Model 1 IGA), 1065 and Schedules K-1 as required under section 6 of this Agreement.

(2) *Limitations on Material Failures.* A failure described in section 8.03(B)(1)(iv) of this Agreement is a material failure only if the failure was the result of a deliberate action on the part of one or more employees or partners of WP to avoid the requirements of this Agreement or WP's FATCA requirements as a par-

ticipating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI with respect to one or more partners of WP, or was an error attributable to a failure of WP to establish or implement internal controls necessary for WP to meet the requirements of this Agreement. Regardless of these limitations for the certifications described in sections 8.03(A) and (B) of this Agreement, WP is required to correct a failure to withhold or deposit tax under section 3 of this Agreement or to report under section 6 of this Agreement.

(C) *Certification Period and Certification Due Date.*

(1) *Certification Due Date.* For a WP that uses the last year of the certification period for its periodic review, the certification is due on or before December 31 of the calendar year following the end of the certification period. For a WP that uses a year other than the last year of the certification period for its periodic review, and a WP that obtains a waiver of the periodic review requirement, the certification is due on or before July 1 of the year following the certification period.

(2) *Certification Period.* The initial certification period is the period beginning on the effective date of the WP agreement and ending on the third full calendar year that this Agreement is in effect (including renewals of this Agreement). Subsequent certification periods will be every three calendar years following the initial certification period (including renewals of this Agreement).

(3) *FATCA Certifications.* The certification period described in section 8.03(C)(2) of this Agreement may not be the same as the certification period (if any) applicable to WP's FATCA requirements as a participating FFI or registered deemed-compliant FFI. WP is required to make the certification required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI at the time and in the manner specified in such requirements.

#### **Sec. 8.04. Periodic Review Absent Waiver.**

Unless WP receives a waiver (the requirements of which are described in section 8.07(B) of this Agreement), at the time WP provides the certification described in section 8.03 of this Agreement, WP must

also provide certain factual information regarding its partners, withholdable payments, and amounts subject to chapter 3 withholding, based on the results of a periodic review. The factual information requested is included in the Appendix to this Agreement.

(A) *Independent Reviewer.* The periodic review may be performed by an internal reviewer (such as an internal auditor) that is an employee of WP or the general partner of WP, including an employee of the Compliance Entity in the case of a consolidated compliance program (internal reviewer), or a certified public accountant, attorney, or third-party consultant (external reviewer), or any combination thereof.

(1) *Internal Reviewer.* WP may designate an internal reviewer to perform the periodic review (or a portion of the periodic review) only when the internal reviewer is competent with respect to the requirements of this Agreement. The internal reviewer must also be able to report findings that reflect the independent judgment of the reviewer. The internal reviewer must not be reviewing its own work, procedures, or results (e.g., the internal reviewer reviewing WP's documentation cannot be part of the team primarily responsible for collecting and validating documentation). The results of the periodic review and the internal reviewer's reporting of such results to the responsible officer cannot influence or affect the compensation, bonus, employment status, or employee review of the internal reviewer. The IRS has the right to request the performance of the periodic review by an alternative reviewer if the IRS, in its sole discretion, reasonably believes that the reviewer selected by WP was not independent, as described in this Agreement, or did not perform an effective periodic review under this Agreement.

In the case of a consolidated compliance program, the Compliance Entity of a consolidated compliance program of which WP is a member (if WP is approved by the IRS) may designate an internal reviewer to perform the consolidated periodic review (or a portion of the consolidated periodic review). See sections 8.02(B) and (C) of this Agreement. The internal reviewer of the Compliance Entity must meet the requirements of this section with respect to each WP that is a

member of the consolidated compliance program.

(2) *External Reviewer.* WP may engage an external reviewer that is a certified public accountant, attorney, or third-party consultant that is regularly engaged in the practice of performing reviews of clients' policies, procedures, and processes for complying with accounting, tax, or regulatory requirements (including for assisting clients in determining such compliance). The external reviewer cannot be reviewing systems, policies, or procedures or the results thereof that it (or the firm with which it is affiliated) was involved in designing, implementing, or maintaining. The external reviewer must be in good standing with and comply with any applicable professional standards for maintaining its license as an accountant or attorney (or other third-party consultant that has similar professional standards or requirements). The external reviewer is not required to make an attestation or render an opinion regarding WP's compliance with this Agreement or WP's compliance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, but the reviewer must be able to perform the periodic review as specified in section 8.05 of this Agreement. WP must permit the external reviewer access to all relevant records of WP for purposes of performing the review, including information regarding specific partners. Additionally, the engagement between the external reviewer and WP must impose no restrictions on WP's ability to provide the results of the review to the IRS. However, the external reviewer is not required to divulge the identity of WP's foreign partners to the IRS, except as otherwise required under WP's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. WP must permit the IRS to communicate directly with the external reviewer and any legal prohibitions that prevent the IRS from communicating directly with the reviewer must be waived.

**Sec. 8.05. Scope and Timing of Review.** The responsible officer of WP (or the Compliance Entity if WP is a member of a consolidated compliance program) must require the reviewer to review WP's doc-

umentation, withholding, reporting, and other obligations under this Agreement and WP's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, and identify deficiencies in meeting these obligations. To the extent WP applies the joint account option with respect to another partnership or trust as described in section 9.01 of this Agreement or acts as a withholding foreign partnership for any indirect partners as described in section 9.03 of this Agreement, the review must include such indirect partners, beneficiaries, or owners in addition to WP's direct partners. In addition, if WP applies the agency option to a partnership or trust as described in section 9.02 of this Agreement, the review must include the partners, beneficiaries, or owners of such partnership or trust unless the partnership or trust conducts its own review in accordance with this section 8 of this Agreement and provides the responsible officer of WP with the report documenting the results of such review as described in section 8.06 of this Agreement. Unless otherwise approved by the IRS, the review must include the steps described in sections 8.05(A) through (D) of this Agreement. WP is required to arrange for the performance of one review for the certification period to evaluate WP's documentation, withholding, and reporting practices. The review may be conducted for any calendar year covered by the certification period. WP may conduct a review for a particular calendar year if, on the due date for reporting the factual information relating to the periodic review (provided in section 8.04 of this Agreement), there are 15 or more months available on the period for assessment under section 6501(a) of the calendar year for which the review is to be conducted or the WP submits, upon request, a Form 872, Consent to Extend the Time to Assess Tax, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 11.06 of this Agreement.

If WP has more than 60 partners for which WP acts for the year of the periodic review, WP's reviewer may use statistical sampling procedures by applying the principles set forth in Appendix II of the QI Agreement in Revenue Procedure 2017-

15, 2017-03 I.R.B. 437 for the periodic review.

If the reviewer determines that underwithholding has occurred, WP shall pay any amount determined and report both the underwithholding determined by the review and any amount of underwithholding that was cured following the review by obtaining the documentation required to support reduced withholding by WP (without regard to projection if statistical sampling is used for the review). WP must also notify the IRS Foreign Intermediaries Program at the address provided in section 11.06 of this Agreement of the underwithholding discovered as a result of the review within 30 days of the completion of the review.

(A) *Documentation.* The reviewer must—

(1) Review information contained in documentation obtained for WP's partners and any correspondence or memoranda associated with the partners (the partners' files) to ensure that WP obtained documentation that meets the requirements described in section 4 of this Agreement (including the treaty statements and limitation on benefits information required by section 4.03(B) of this Agreement for partners making treaty claims);

(2) Review information contained in the partners' files to determine if the documentation validity standards of section 4.10 of this Agreement have been met. For example, the reviewer must verify that WP is withholding at the correct rate after any change in circumstances (e.g., a change of address to a U.S. address or change of account holder status from foreign to U.S. or a change in chapter 4 status from participating FFI to nonparticipating FFI); and

(3) Review WP's partners' files to ensure that WP is obtaining, reviewing, and maintaining documentation in accordance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

(B) *Withholding Responsibilities.* The reviewer must—

(1) Perform test checks of WP's direct partners that are recalcitrant account holders (if applicable) and nonparticipating FFIs to verify that WP is withholding as required under chapter 4;

(2) Perform test checks of foreign partners

for which no withholding is required under chapter 4 based on the partner's chapter 4 status to verify that WP withheld the proper amounts; and

(3) Verify that amounts withheld by WP were timely deposited in accordance with section 3.05 of this Agreement.

(C) *Return Filing and Information Reporting.* The reviewer must—

(1) Obtain copies of original and amended Forms 1042, and any schedules, statements, or attachments required to be filed with those forms, and verify that the forms have been filed and determine whether the amounts of income, taxes, and other information reported on those forms are accurate by—

(i) Reviewing copies of Forms 1042-S received from withholding agents for reconciling amounts received by WP with the amounts distributed to, or included in the distributive share of, WP's partners;

(ii) Reviewing account statements and correspondence from withholding agents;

(iii) Determining that adjustments to the amount of tax shown on Form 1042 (and any claim by WP for refund or credit) properly reflect the adjustments to withholding made by WP using the reimbursement or set-off procedures under section 7 of this Agreement and that the adjustments are supported by sufficient documentation;

(iv) Reconciling amounts shown on Forms 1042 with amounts shown on Form 1042-S (including the amount of taxes reported as withheld); and

(v) In the case of collective credits or refunds, reviewing the statements attached to the amended Forms 1042 filed to claim a collective credit or refund, determine whether those forms are accurate, and—

(a) Determining the causes of any over-withholding reported and ensure WP did not issue Forms 1042-S to partners that were included as part of its collective credit or refund claim;

(b) Determining that WP repaid the appropriate partners and that the amount of the claim is accurate and supported by adequate documentation for reducing the rate of withholding; and

(c) Determining that WP did not include payments made to a partner described in section 7.02(A) of this Agreement or a partnership or trust described in section 9.01 of this Agreement.

(2) Obtain copies of original and amended Forms 1042-S, 1065, Schedules K-1, and 1120-F (if applicable) filed by WP together with the work papers used to prepare those forms and determine whether the amounts reported on those forms are accurate by—

(i) Reviewing the Forms 1042-S received from withholding agents;

(ii) Reviewing the Form 1065, if required, and if no Form 1065 was required to be filed, determining whether the exemption from filing was properly applied;

(iii) Reviewing Schedules K-1 or income statements issued by WP to partners, if any;

(iv) Reviewing Form 1120-F (if applicable);

(v) Reconciling any payments and tax reported on Forms 1042-S received from withholding agents with amounts (including characterization of income) and taxes reported by WP as withheld on Forms 1042-S and determining the reason(s) for any variance; and

(vi) Determining, in any case in which WP utilized the reimbursement or set-off procedure, that WP satisfied the requirements of section 7 of this Agreement and that the adjusted amounts of tax withheld are properly reflected on Forms 1042-S.

(3) Obtain copies of original and amended Forms 8966 (or, if WP is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to an applicable Model 1 IGA), and determine whether the amounts of income and other information reported on Forms 8966 are accurate by—

(i) Reviewing U.S. accounts (or U.S. reportable accounts), accounts held by non-participating FFIs, and recalcitrant account holders to determine that such accounts were reported in accordance with WP's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(ii) If WP is an NFFE, confirming that any direct partners that are passive NFFEs with one or more substantial U.S. owners were reported in accordance with § 1.1472-1(c)(3);

(iii) Confirming with respect to any pass-through partner that provides information regarding an account holder (or interest holder) that is an NFFE (other than an

excepted NFFE) with one or more substantial U.S. owners that such substantial U.S. owners were reported to the extent required under section 6.05(C) of this Agreement;

(iv) Reviewing the documentation provided by a partnership or trust to which WP applied the agency option, confirming that WP reported on Form 8966 (or, if WP is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to an applicable Model 1 IGA) to the extent required under section 9 of this Agreement; and

(v) Reviewing work papers used to prepare these forms.

(4) If WP is a foreign reverse hybrid entity, obtain the Reconciliation Statement described in section 6.03(C)(3) of this Agreement and determine whether the amounts shown on the statement are accurate by—

(i) Comparing the total amount of non-ECI U.S. source FDAP income shown on the Reconciliation Statement to the total amount of non-ECI U.S. source FDAP income reported on Forms 1042-S received from withholding agents; and

(ii) Comparing the allocations of non-ECI U.S. source FDAP income to each partner on the Reconciliation Statement to the allocations of income and loss generally to each such partner under WP's partnership agreement.

(5) If WP is a foreign reverse hybrid entity, obtain copies of the PFIC Annual Information Statements issued to each U.S. person that is a shareholder (as defined in § 1.1295-1(j)) and determine whether the amounts shown on the statements are accurate by reviewing WP's books of account, records, and such other documents maintained by WP to establish that WP's ordinary earnings and net capital gain are computed in accordance with U.S. income tax principles, and to verify these amounts and each shareholder's pro rata shares thereof.

(D) *Significant Change in Circumstances.* The reviewer must verify that in the course of the review it has not discovered any significant change in circumstances, as described in section 10.04(A), (D), or (E) of this Agreement.

#### **Sec. 8.06. Periodic Review Report.**

(A) *In General.* The results of the periodic review must be documented in a written

report addressed to the responsible officer of WP (or the responsible officer of the Compliance Entity) and must be available to the IRS upon request (with a certified translation into English if the report is not in English). The report must describe the scope of the review and the actions performed to satisfy each requirement of section 8.05(A) through (D). The report may include explanatory footnotes to clarify the results of the report. Recommendations may be included but are not required to be provided in the report. The periodic review report should form the basis for the factual information provided by WP that is set forth in the Appendix to this Agreement.

In addition to the findings of section 8.05 of this Agreement, the periodic review report must also include details regarding the documentation and tax deposit and payment failures identified by the reviewer but then cured before the periodic review report is finalized. While the curing of inadequate documentation is permissible, the factual information reported (as set forth in the Appendix to this Agreement) should report the results of the review as it was performed and should not reflect the results after curing. Any curing process should not delay certification of internal controls or factual information required in the Appendix to this Agreement. To the extent necessary, the periodic review report should include the dates on (or time period during) which curative documentation was received for partners with respect to which the reviewer determined that underwithholding had occurred, the number of partners for which curative documentation was obtained, and a revised calculation of the underwithholding.

*(B) Partnership or Trust to which WP Applies the Agency Option.* Any partnership or trust to which WP applies the agency option and that does not provide documentation and other information to WP for inclusion in WP's periodic review described in section 8.04 of this Agreement must conduct an independent periodic review in accordance with the compliance procedures described in section 8.05 of this Agreement. The performance results of the periodic review must be documented in a written report addressed to the responsible officer of WP and must

be available to the IRS upon request (with a certified translation into English if the certification is not in English).

*(C) Retention of Report and Certifications.* The report and certifications described in this section 8.06 must be retained by WP (or the Compliance Entity of a consolidated compliance group) for as long as this Agreement is in effect (including renewals of this Agreement).

#### **Sec. 8.07. Waiver of Periodic Review Requirement.**

*(A) In General.* A WP that is an FFI that meets the requirements of section 8.07(B) of this Agreement may apply for a waiver of the periodic review requirement. The waiver application is set forth in Part III of the Appendix to this Agreement. WP must include the information of any partnership or trust to which WP applies the agency option in its waiver application. WP must request a waiver under this section 8.07 at the time the responsible officer makes the certification described in section 8.03 of this Agreement. WP's request for such a waiver must be approved by the IRS, and waiver requests are not approved automatically. If WP's request for a waiver is approved, such approval is only to waive WP's obligations under sections 8.04 and 8.05 of this Agreement, and WP is still required to make the certification described in section 8.03 of this Agreement. The waiver does not preclude the IRS from requesting information or conducting a correspondence review as described in section 8.08 of this Agreement. WP must apply for a waiver for each certification period for which a waiver is requested.

*(B) Eligibility.* WP is eligible to apply for a waiver of the periodic review requirement if it meets the following requirements—

- (1) WP must be an FFI;
- (2) WP cannot be part of a consolidated compliance program;
- (3) For each calendar year covered by the certification period, the reportable amounts received by WP cannot exceed \$1 million;
- (4) WP must have timely filed its Forms 1042, 1042-S, and 8966 (or the reporting required under an applicable IGA), 1065, and Schedule K-1, as applicable, for all years (fiscal or calendar) in the certification period;

(5) WP must have made all periodic certifications and reviews required by sections 8.02 and 8.03 of this Agreement for each certification period, as well as any certifications required pursuant to WP's FATCA requirements as a participating FFI or registered deemed-compliant FFI; and

(6) WP must make the certification of effective internal controls described in Part II.A of the Appendix to this Agreement for the certification period for which WP is applying for a waiver of the periodic review.

*(C) Documentation Required with Waiver Application.* When applying for a waiver under this section 8.07, WP must include the information described in Part III.B of the Appendix to this Agreement using the most recent calendar year in the certification period for which filing is due and reporting such results without any curing or remediation.

*(D) Approval.* If WP's request for a waiver of the periodic review requirement is approved, the IRS will notify WP. If WP requests a waiver but such request is not approved, WP will be granted a six month extension from the date of denial of the waiver to complete the periodic review under sections 8.04 and 8.05 of this Agreement. Such extension will not be granted if WP has made the request for waiver in bad faith.

#### **Sec. 8.08. IRS Review.**

*(A) In General.* Based upon the certifications made by the responsible officer and disclosure of material failures, the information reported on Forms 1042, 1042-S, 1065, and 8966 and Schedules K-1 filed with the IRS during the certification period, or otherwise at the IRS's discretion for compliance purposes, the IRS may initiate requests of WP under this section 8.08. The IRS may request remediation or the conduct of a limited periodic review earlier than the time period provided in this section if, based on the information described above, the IRS identifies, in its discretion, a presence of factors indicating systemic or significant compliance failures by WP. The IRS may also request that WP designate a replacement responsible officer if WP's responsible officer has not complied with its responsibilities (including responding to requests by the IRS for additional information) or the IRS

has information that indicates the responsible officer may not be relied upon to comply with its responsibilities.

*(B) Periodic Review Report.* The IRS may request, through written correspondence to the responsible officer of WP or the Compliance Entity, a copy of the results of WP's periodic review for any prior certification period or the periodic review report of any partnership or trust with which WP has an agency agreement during the current certification period (with a certified translation into English if the report is not in English). WP is required to provide the results within 30 calendar days of such request.

*(C) Correspondence Review.* The IRS may, in its discretion, conduct additional fact finding through a correspondence review. In such a review, the IRS will contact the responsible officer of WP (or the Compliance Entity of a consolidated compliance program) in writing and request information about WP's compliance with this Agreement or the compliance of a partnership or trust to which WP applied the agency option, including, for example, information about documentation, withholding, or reporting processes, its periodic review, and information about any material failures that were disclosed to the IRS (including remediation plans). The IRS may request phone or video interviews with relevant personnel of WP (or the Compliance Entity of a consolidated compliance program) or a partnership or trust to which WP applied the agency option as part of such review. WP is required to respond within a reasonable period of time to any such requests.

*(D) Additional Review Procedures.* In limited circumstances, the IRS may direct WP (or the Compliance Entity of a consolidated compliance program) or any partnership or trust described in section 9.02 of this Agreement to which WP applies the agency option to perform additional, specified review procedures. The IRS reserves the right to require WP (or the Compliance Entity of a consolidated compliance program) or a partnership or trust to which WP applied the agency option to engage an external reviewer to perform the additional review procedures regardless of whether such reviewer performed the periodic review. The IRS will provide the responsible officer of WP with

a written plan describing the additional review procedures and will provide a period of not more than 120 days within which the WP must provide to the IRS a report covering the reviewer's findings.

## **Section 9. CERTAIN PARTNERSHIPS AND TRUSTS**

### **Sec. 9.01. Joint Account Treatment for Certain Partnerships and Trusts.**

*(A) In General.* WP may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in this section 9.01(A) to apply the simplified joint account documentation, reporting, and withholding procedures provided in section 9.01(B) of this Agreement. WP and the partnership or trust that apply this section 9.01 to any calendar year must apply these rules to the calendar year in its entirety. WP and the partnership or trust may not apply this section 9.01 to any calendar year in which the partnership or trust has failed to make available to WP or WP's reviewer the records described in section 9.01(A)(5) of this Agreement within 90 days after these records are requested and the partnership or trust must waive any legal prohibitions against providing such records to WP. If the partnership or trust has failed to make these records available within the 90-day period, or if WP and the partnership or trust fail to comply with any other requirements of this section 9.01, WP must apply the provisions of §§ 1.1441-1 and 1.1441-5 to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, must correct its withholding for the period during which the failure occurred in accordance with section 7.03 of this Agreement, and cannot apply this section 9.01 to subsequent calendar years. WP and the partnership or trust that apply this section 9.01 to any calendar year are not required to apply this section 9.01 to subsequent calendar years.

A partnership or trust is described in this section 9.01(A) if the following conditions are met.

*(1)* The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI, an owner-documented FFI with respect to WP, an exempt beneficial owner, or an NFFE, and has provided WP with a

certification that it has maintained such chapter 4 status at all times during each certification period;

*(2)* The partnership or trust is a direct partner of WP;

*(3)* None of the partnership's or trust's partners, beneficiaries, or owners is a flow-through entity or intermediary;

*(4)* None of the partnership's or trust's partners, beneficiaries, or owners is a U.S. person and none of its foreign partners, beneficiaries, or owners is subject to withholding or reporting under chapter 4 (e.g., a nonparticipating FFI or certain passive NFFEs); and

*(5)* The partnership or trust agrees to make available upon request to WP and WP's reviewer for purposes of WP's periodic review under section 8 of this Agreement (including to respond to IRS inquiries regarding its compliance review) records that establish that the partnership or trust has provided WP with documentation for purposes of chapters 3 and 4 for all of its partners, beneficiaries, or owners.

*(B) Modification of Obligations for WP.*

*(1)* WP may rely on a valid Form W-8IMY provided by the partnership or trust and may rely on a withholding statement that meets the requirements of §§ 1.1441-5(c)(3)(iv) or (e)(5)(iv) and 1.1471-3(c)(3)(iii)(B) (if the payment is a withholdable payment) and that provides information for all partners, beneficiaries, or owners together with valid Forms W-8 and, for a withholdable payment made to a partner, beneficiary, or owner that is an entity, documentation required under § 1.1471-3(d) to establish such partner's, beneficiary's, or owner's chapter 4 status. The withholding statement, however, need not provide any allocation information.

*(2)* WP must treat amounts distributed to, or included in the distributive share of, the partnership or trust as allocated solely to a partner, beneficiary, or owner that is subject to the highest rate of withholding under chapter 3 and must withhold at that rate.

*(3)* WP may pool report amounts distributed to, or included in the distributive share of, the partnership's or trust's direct partners, beneficiaries, or owners in WP's chapter 3 reporting pools on Form 1042-S as described in section 6.02(D) of this Agreement.

(4) After WP has withheld in accordance with section 9.01(B)(2) of this Agreement, it may file a separate Form 1042-S for any partner, beneficiary, or owner who requests that it do so. If WP issues a separate Form 1042-S for any partner, beneficiary, or owner, it cannot include such partner, beneficiary, or owner in its chapter 3 reporting pool. If WP has already filed a Form 1042-S and included the partner, beneficiary, or owner in a chapter 3 reporting pool, it must file an amended return to reduce the amount of the payment reported to reflect the amount allocated to the recipient on the recipient's specific Form 1042-S. WP may file a separate Form 1042-S for a partner, beneficiary, or owner only if the partnership or trust provides a withholding statement that includes allocation information for the requesting partner, beneficiary, or owner and only if the partnership or trust has agreed in writing to make available to WP or WP's reviewer the records that substantiate the allocation information included in its withholding statement.

(5) WP may not include any amounts distributed to, or included in the distributive share of, a partnership or trust to which WP is applying the rules of this section 9.01 in any collective refund claim made under section 7.02 of this Agreement.

#### **Sec. 9.02. Agency Option for Certain Partnerships and Trusts.**

(A) *In General.* WP may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in section 9.02(A) of this Agreement under which the partnership or trust agrees to act as an agent of WP with respect to its partners, beneficiaries, or owners, and, as WP's agent, to apply the provisions of the WP agreement to the partners, beneficiaries, or owners. By entering into an agreement with a partnership or trust as described in this section 9.02, WP is not assigning its liability for the performance of any of its obligations under the WP agreement. WP and the partnership or trust to which WP applies the rules of this section 9.02 are jointly and severally liable for any tax, penalties, and interest that may result from the failure of the partnership or trust to meet any of the obligations imposed by its agreement with WP. WP and the partnership or

trust that applies the agency option to any calendar year must apply these rules to the calendar year in its entirety. Generally, WP and the partnership or trust that apply the agency option to any calendar year are not required to apply the agency option to subsequent calendar years. If, however, WP withholds and reports any adjustments required by corrected information in a subsequent calendar year under section 9.02(B)(2) of this Agreement, WP must apply the agency option to that calendar year in its entirety.

If the partnership or trust is included in WP's periodic review of compliance as described in section 9.02(A)(6) of this Agreement, WP and the partnership or trust may not apply the agency option to any calendar year in which the partnership or trust has failed to make available to WP or WP's reviewer the records described in this section 9.02 within 90 days after these records are requested and the partnership or trust must waive any legal prohibitions against providing such records to the WP. If, for any calendar year, the partnership or trust has failed to make these records available within the 90-day period, or if WP and the partnership or trust fail to comply with any other requirement of this section 9.02, WP must apply §§ 1.1441-1 and 1.1441-5 to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, correct its withholding for the period in which the failure occurred in accordance with section 7.03 of this Agreement, and cannot apply this section 9.02 to subsequent calendar years.

A partnership or trust is described in this section 9.02(A) if the following conditions are met:

(1) The partnership or trust is either a direct partner of WP or an indirect partner of WP that is a direct partner, beneficiary, or owner of a partnership or trust to which WP also applies this section 9.02.

(2) The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI, an owner-documented FFI with respect to WP, an NFFE, or an exempt beneficial owner, and has provided WP with a certification that it has maintained such chapter 4 status during each certification period.

(3) None of the partnership's or trust's partners, beneficiaries, or owners is a WT,

WP, participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or QI acting as an intermediary for a payment made by WP to the partnership or trust.

(4) WP may not act as a withholding foreign partnership with respect to any direct or indirect partner of the partnership or trust that is a U.S. non-exempt recipient, unless the U.S. non-exempt recipient is an owner of an owner-documented FFI or passive NFFE to which WP applies the agency option and is included in WP's U.S. payee pool (described in section 6.02(C) of this Agreement).

(5) The partnership or trust agrees to comply with the documentation requirements described in section 4 of this Agreement.

(6) The partnership or trust agrees, to the extent necessary for WP to satisfy its compliance obligations (e.g., if the WP does not receive a waiver as described in section 8.07 of this Agreement), either to (i) conduct an independent periodic review in accordance with the procedures described in section 8.05 of this Agreement and provide WP with the certification required under section 8.03 of this Agreement for each certification period in order to allow the responsible officer of WP to make a certification to the IRS regarding the partnership's or trust's compliance with this section 9.02, or (ii) provide WP with documentation or other information for inclusion in WP's periodic review described in section 8.04 of this Agreement. The partnership or trust must also agree to respond (either directly or through WP) to IRS inquiries regarding its compliance review, as described in section 8.08 of this Agreement, including, if applicable, providing the WP and the IRS with the results of the reviewer's testing of partners, beneficiaries, or owners described in section 8.06 of this Agreement.

(B) *Modification of Obligations for WP.*

(1) WP may rely on a valid Form W-8IMY provided by the partnership or trust, together with a withholding statement described in §§ 1.1441-5(c)(3)(iv) or (e)(5)(iv) and 1.1471-3(c)(3)(iii)(B) (if the payment is a withholdable payment) that includes all information necessary for WP to fulfill its withholding, reporting, and filing obligations under this Agreement. For a withholdable payment, the withholding statement may include a

chapter 4 withholding rate pool (as defined in § 1.1471-1(b)(20)) of nonparticipating FFIs for payments of amounts subject to chapter 4 withholding. The withholding statement may also include chapter 3 withholding rate pools for partners, beneficiaries, or owners that are not intermediaries, flow-through entities (or persons holding interests in the partnership or trust through such entities), U.S. non-exempt recipients, or passive NFFEs with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable Model 1 or Model 2 IGA), and the partnership or trust need not provide to WP documentation for these partners, beneficiaries, or owners. Notwithstanding the preceding sentences of this section 9.02(B)(1), the partnership or trust is required to disclose to WP any partner or interest holder that is a passive NFFE with substantial U.S. owners (or controlling persons that are specified U.S. persons under an applicable IGA) or that is a U.S. non-exempt recipient, as well as the account holders of any nonqualified intermediary or interest holders in a flow-through entity which has an interest in the partnership or trust, and provide all of the documentation and other information relating to those account holders and interest holders that is required for WP or another withholding agent to report the payments made to those account holders and interest holders to the extent required by section 6 of this Agreement.

*(2) Timing of Withholding.* WP must withhold on the date an amount is distributed to, or included in the distributive share of, the partnership or trust based on a withholding statement provided by the partnership or trust on which WP is permitted to rely. The amount allocated to each partner, beneficiary, or owner in the withholding statement may be based on a reasonable estimate of the partner's, beneficiary's, or owner's distributive share of income subject to withholding for the year. The partnership or trust must correct the estimated allocations to reflect the partner's, beneficiary's, or owner's actual distributive share and must provide this corrected information to WP on the earlier of the date that the statement required under section 6031(b) (i.e., Schedule K-1) or the Ben-

eficiary Statement or Owner Statement is mailed or otherwise provided to the partner, beneficiary, or owner or the due date for furnishing the statement (whether or not the partnership or trust is required to prepare and furnish the statement). If that date is after the due date (without regard to extensions) for WP's Forms 1042 and 1042-S for the calendar year, WP may withhold and report any adjustments required by correcting the information in the following calendar year.

*(3) Payments Reportable under Chapters 3 and 4.* WP shall report on Form 1042-S all amounts subject to chapters 3 and 4 withholding distributed to, or included in the distributive share of, the partnership or trust as follows.

*(i)* For a direct partner, beneficiary, or owner of the partnership or trust that is a nonparticipating FFI, WP shall report an amount subject to withholding using the chapter 4 reporting pool described in section 6.02(C) of this Agreement with the partnership or trust reported as the recipient.

*(ii)* For a direct partner, beneficiary, or owner of the partnership or trust that is a foreign person for which no withholding is required under chapter 4 (other than an intermediary, agent, or flow-through entity described below), WP shall report an amount subject to chapter 3 withholding using the chapter 3 reporting pools as described in section 6.02(D) of this Agreement with the partnership or trust reported as the recipient.

*(iii)* For a direct or indirect partner, beneficiary, or owner of the partnership or trust that is a nonqualified intermediary or flow-through entity, WP shall report payments of amounts subject to chapter 4 withholding included in a chapter 4 withholding rate pool of nonparticipating FFIs using the chapter 4 reporting pool for such partner, beneficiary, or owner with the nonqualified intermediary or flow-through entity reported as the recipient, and WP shall report payments of amounts subject to chapter 3 withholding that are not withholdable payments or are withholdable payments for which no chapter 4 withholding is required by reporting the payments as made to specific recipients as described in 6.02(B) of this Agreement.

*(4) Form 8966 Reporting Requirements.* If

WP is an FFI and if the partnership or trust is a U.S. account (or U.S. reportable account), WP is required to report the partnership or trust consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. The agreement between WP and the partnership or trust must also provide that WP shall report withholdable payments that the partnership or trust distributes to, or includes in the distributive share of, a partner, beneficiary, or owner that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA) and is the beneficial owner of the withholdable payment received by the partnership or trust. WP must report on Form 8966 in the time and manner provided in § 1.1474-1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner (or controlling person that is a specified U.S. person); the name, address, and U.S. TIN of each substantial U.S. owner (or controlling person that is a specified U.S. person); the total of all withholdable payments made to the NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions.

*(C) Other Requirements of Agency Agreement.* WP shall require the partnership or trust to which it applies the agency option described in this section 9.02 to provide WP with all the information necessary for WP to meet its obligations under this Agreement. No provisions shall be contained in the agreement between WP and the partnership's or trust that preclude, and no provisions of this Agreement shall be construed to preclude, the partnership's or trust's joint and several liability for tax, penalties, and interest under chapters 3 and 4 to the extent that underwithholding, penalties, and interest have not been collected from WP and the underwithholding or failure to report amounts correctly on Forms 1042, 1042-S or 8966, is due to the partnership's or trust's failure to properly perform its obligations under its agreement with WP. Nothing in the agreement between WP and the partnership or trust shall be construed to limit the partner-

ship's or trust's requirements under chapter 4 as a certified deemed-compliant FFI, an owner-documented FFI with respect to WP, an NFFE, or an exempt beneficial owner. Further, nothing in the agreement between WP and the partnership or trust shall permit the partnership or trust to assume primary chapters 3 and 4 withholding responsibility.

### **Sec. 9.03. Indirect Partners of WP.**

(A) *General Requirements.* WP may act as a withholding foreign partnership for reportable amounts distributed to, or included in the distributive share of, passthrough partners and indirect partners if such indirect partner is not a U.S. non-exempt recipient. Notwithstanding the preceding sentence, WP may act as a withholding foreign partnership with respect to an indirect partner that is a U.S. non-exempt recipient if the indirect partner is included in a passthrough partner's chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees. WP does not need to use the agency option described in section 9.02 of this Agreement or make the pooled reporting election described in section 6.02(D) of this Agreement to apply the procedures described in this section 9.03.

(B) *Modification of Obligations for WP.*

(1) Except to the extent described in this section 9.03(B), WP need not forward the documentation and the withholding statement of the passthrough partner and indirect partner to WP's withholding agent;

(2) WP must provide its withholding agent with documentation and other information from any passthrough partner whose direct or indirect partner is a U.S. non-exempt recipient (unless such U.S. non-exempt recipient is included in a chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees);

(3) WP will assume primary chapters 3 and 4 withholding responsibility as described in section 3 of this Agreement and must report on its indirect partners on a specific payee basis on Form 1042-S (except to the extent such indirect partners are included in a passthrough partner's chapter 4 withholding rate pool or a QI's withholding rate pool) as described in section 6.02(B) of this Agreement, regardless of whether WP made a PR election for its direct partners under section 6.02(D) of this Agreement; and

(4) WP must include any passthrough partner and indirect partner for which it acts as a withholding foreign partnership in its periodic review as described in section 8.05 of this Agreement.

(C) *Documentation from Passthrough Partner.* WP agrees to use its best efforts to obtain from a passthrough partner the documentation of an indirect partner for which WP acts as a withholding foreign partnership. Unless WP can reliably associate an amount distributed to, or included in the distributive share of, any passthrough partner with valid documentation from such partner within the meaning of § 1.1441-1(b)(2)(vii) and, for a withholdable payment, § 1.1471-3(c), WP shall apply the presumption rules described in §§ 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5(d) and (e)(6), 1.1441-9(b)(3), and 1.6049-5(d) and for a withholdable payment made to an entity, § 1.1471-3(f) or, if WP is an FFI, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. Generally, WP can reliably associate an amount with documentation provided by a passthrough partner if WP obtains—

(1) A valid Form W-8IMY provided by the passthrough partner that, if the payment is a withholdable payment, establishes the chapter 4 status of the passthrough partner; and

(2) If the payment is a withholdable payment, a withholding statement that meets the requirements of § 1.1471-3(c)(3)(iii)(B) that includes the account holders or interest holders of the passthrough partner in chapter 4 withholding rate pools to the extent permitted, and, for an amount subject to chapter 3 withholding that is not a withholdable payment or is a withholdable payment for which chapter 4 withholding is not required, valid documentation described in section 4 of this Agreement provided by account holders or interest holders of the passthrough partner that are not themselves nonqualified intermediaries or flow-through entities.

WP may not reduce the rate of withholding with respect to an indirect partner that is a foreign beneficial owner for which it acts as a WP unless WP can reliably associate the payment with valid documentation that establishes the indirect part-

ner's entitlement to a reduced rate of withholding under chapter 3 and, in the case of a withholdable payment, establishes that chapter 4 withholding does not apply.

(D) *Timing of Withholding.* WP must withhold on the date an amount is distributed to, or included in the distributive share of, the passthrough partner based on a withholding statement provided by the passthrough partner on which WP is permitted to rely. The amount allocated to each indirect partner in the withholding statement may be based on a reasonable estimate of the indirect partner's distributive share of income subject to withholding for the year. The passthrough partner must agree to correct the estimated allocations to reflect the indirect partner's actual distributive share and must provide this corrected information to WP, on the earlier of the date that the statement required under section 6031(b) of the Code (Schedule K-1) is mailed or otherwise provided to the indirect partner or the due date for furnishing the statement (whether or not the passthrough partner is required to prepare and furnish the statement). If that date is after the due date (without regard to extensions) for WP's Forms 1042 and 1042-S for the calendar year, WP may withhold and report any adjustments required by correcting the information in the following calendar year.

(E) *Form 8966 Reporting Requirements.* If WP is an FFI and if the passthrough partner is a U.S. account (or U.S. reportable account), WP is required to report the partnership or trust consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. WP shall also report withholdable payments that WP distributes to, or includes in the distributive share of, a passthrough partner if an account holder or interest holder of such passthrough partner is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA) and if the NFFE is the beneficial owner of the withholdable payment received by the passthrough partner. WP must report on Form 8966 in the time and manner provided in § 1.1474-1(i)(2). Such report must include the name

of the NFFE that is owned by a substantial U.S. owner (or controlling person that is a specified U.S. person); the name, address, and U.S. TIN of each substantial U.S. owner (or controlling person that is a specified U.S. person); the total of all withholdable payments made to the NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions.

WP is not required to report under § 1.1474-1(i)(2) on a withholdable payment made to a passthrough partner that is a participating FFI or registered deemed-compliant FFI that is allocated to a payee that is a passive NFFE with one or more substantial U.S. owners on an FFI withholding statement when the participating FFI or registered deemed-compliant FFI includes on the statement the certification described in § 1.1471-3(c)(3)(iii)(B)(2)(iv) (certifying that the FFI is reporting the passive NFFE as a U.S. account or U.S. reportable account in accordance with the terms of the FFI agreement or an applicable IGA), provided WP does not know or have reason to know that the certification is incorrect or unreliable. See § 1.1474-1(i)(2).

## **Section 10. EXPIRATION, TERMINATION AND DEFAULT**

**Sec. 10.01. Term of Agreement.** This Agreement begins on the effective date, as described in section 12 of this Agreement, and expires upon the earlier of the date WP terminates under its partnership agreement or the end of the sixth full calendar year the Agreement is in effect, unless terminated under section 10.02 or 10.03 of this Agreement. This Agreement may be renewed for additional terms as provided in section 10.07 of this Agreement.

### **Sec. 10.02. Termination of Agreement (In General).**

(A) *In General.* Except as otherwise provided in section 10.03 of this Agreement, this Agreement may be terminated by either the IRS or WP prior to the end of its term by delivery of a notice, in accordance with section 11.06 of this Agreement, of termination to the other party. The IRS, however, shall not terminate this Agreement unless there has been a significant change in circumstances, as defined in section 10.04 of this Agreement, or an

event of default has occurred, as defined in section 10.05 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 shall not terminate this Agreement if WP can establish to the satisfaction of the IRS that all events of default for which it has received notice have been cured within the time period agreed upon. The IRS shall notify WP that an event of default has occurred and that the IRS intends to terminate the Agreement unless WP cures the default or establishes that no event of default has occurred. A notice of termination sent by either party shall take effect on the date specified in the notice, and WP is required to notify its withholding agent of the date its status as a WP was terminated.

The termination of the Agreement shall not affect any of WP's reporting, tax filing, withholding, depositing, or payment responsibilities arising in the calendar years for which this Agreement was in effect and the portion of the calendar year in which termination is requested. The IRS shall revoke WP's WP-EIN within a reasonable time after the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences.

After the date of termination of this Agreement, WP may not act as a withholding foreign partnership, and must so notify any persons to which WP has furnished a withholding foreign partnership certificate of the termination (including the date of the termination). After the date of termination of this Agreement, the IRS may reinstate this Agreement (or the IRS may require WP to enter into a new withholding foreign partnership agreement) on such terms and conditions and with such modifications as the IRS may determine.

(B) *Final Certification after a Termination of the Agreement.* Upon a termination of this Agreement, WP must provide to the IRS the certification described in section 8.03 of this Agreement covering the period from the end of the most recent certification period (or, if the first certification period has not ended, the effective date of this Agreement) to the date of

termination within six months of the date of termination, regardless of whether a periodic review has been completed for such period.

### **Sec 10.03. Automatic Termination of Agreement.**

(A) *Automatic Termination.* Notwithstanding section 10.02 of this Agreement, this Agreement will terminate automatically in the event that the reviewer or the IRS (including during its compliance review described in section 8.08 of this Agreement) discovers that WP was not in possession of Forms W-8 or W-9, as applicable, or documentary evidence, as permitted under section 4.01(A) of this Agreement, for any direct partner at any time that withholding or reporting was required under section 3.02 of this Agreement. The automatic termination will be effective as of December 31 of the year in which the reviewer or the IRS makes that discovery.

(B) *Cure and Reinstatement after Automatic Termination.* This Agreement will be reinstated, effective the same date it automatically terminated under section 10.03(A) of this Agreement, if—

(1) WP obtains appropriate Forms W-8 or W-9 or documentary evidence, as permitted under section 4.01(A) of this Agreement, that relate to the time withholding or reporting was required, for each such undocumented partner before March 15 of the year following the year in which the Agreement automatically terminated, or

(2) All such undocumented partners have ceased to be partners in WP before March 15 of the year following the year in which the Agreement automatically terminated.

(C) *Payment of Underwithholding and Reporting upon Termination.* In the event of automatic termination of this Agreement under this section 10.03, WP must pay any underwithholding of tax, interest, and penalties that the IRS determines is attributable to each undocumented partner for the period during which the partner was undocumented based on the presumption rules, and, if WP has made a pooled reporting election for chapter 3 purposes, WP must file partner specific Forms 1042-S for amounts subject to chapter 3 withholding for which no chapter 4 withholding is required and Schedules K-1 reporting the names and addresses and other required information, as appropriate,

for every undocumented partner from the earliest time the documentation was required for that undocumented partner through the date of termination. WP may, however, continue to report on a pooled basis for documented foreign direct partners through this period.

**Sec. 10.04. Significant Change in Circumstances.** For purposes of this Agreement, a significant change in circumstances includes, but is not limited to—

(A) Any change in circumstances that would result in a termination of WP under section 708;

(B) A change in U.S. federal law, or applicable foreign law, that affects the validity of any provision of this Agreement, materially affects the procedures contained in this Agreement, or affects WP's ability to perform its obligations under this Agreement;

(C) A ruling of any court that affects the validity of any material provision of this Agreement;

(D) A significant change in WP's business practices that affects WP's ability to meet its obligations under this Agreement;

(E) If applicable, a material change in the applicable know-your-customer rules and procedures when WP relied on documentary evidence as permitted in section 4.01(A) of this Agreement;

(F) If WP is an FFI (other than a retirement fund), WP's failure to maintain its status as a participating FFI, registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI; or

(G) If WP is acting as a sponsoring entity on behalf of a sponsored FFI or sponsored direct reporting NFFE, WP's failure to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity.

**Sec. 10.05. Events of Default.** For purposes of this Agreement, an event of default occurs if WP fails to perform any material duty or obligation required under this Agreement and the responsible officer had actual knowledge of or should have known the facts relevant to the failure to perform any material duty. An event of default includes, but is not limited to, the occurrence of any of the following:

(A) WP fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement;

(B) WP underwithholds a material amount of tax that WP is required to withhold under chapter 3 or 4 and fails to correct the underwithholding or to file an amended Form 1042 reporting, and paying, the appropriate tax;

(C) WP makes excessive refund claims;

(D) WP fails to file required Forms, 1042, 1042-S, 8966, 1065, Schedules K-1, or 1120-F (if WP is a foreign reverse hybrid entity) by the due date specified on such forms or files forms that are materially incorrect or fraudulent;

(E) If WP is an FFI, WP fails to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(F) If WP is a sponsoring entity, WP materially fails to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;

(G) WP fails to perform a periodic review when required or to document the findings of such review in a written report;

(H) WP fails to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects WP's obligations under this Agreement;

(I) WP fails to cure a material failure identified in the qualified certification described in Part II.B of the Appendix to this Agreement or identified by the IRS;

(J) WP makes any fraudulent statement or a misrepresentation of a material fact with regard to this Agreement to the IRS, a withholding agent, or WP's reviewer;

(K) The IRS determines that WP's reviewer is not sufficiently independent, as described in section 8.04 of this Agreement, to adequately perform its review function and WP fails to arrange for a periodic review conducted by a reviewer approved by the IRS;

(L) WP fails to make deposits in the time and manner required by section 3.05 of this Agreement or fails to make adequate deposits, taking into account the procedures of section 7.05 of this Agreement;

(M) If applicable, WP fails to inform the IRS of any change in the applicable know-your-customer rules within 90 days of the change becoming effective when WP relied on documentary evidence as permitted in section 4.01(A) of this Agreement;

(N) WP fails to cooperate with the IRS on its compliance review described in section 8.08 of this Agreement;

(O) A partnership or trust to which WP applies the agency option is in default with the agency agreement and WP fails to terminate that agreement within the time period specified in section 9.02 of this Agreement;

(P) WP fails to materially comply with the requirements of a nonwithholding foreign partnership under chapter 3 with respect to any partner for which it does not act as a withholding foreign partnership;

(Q) With respect to a consolidated compliance program under section 8.02(C) of this agreement, the Compliance Entity failed to comply with the obligations of a Compliance Entity under section 8.02(C) of this Agreement, and, if the Compliance Entity is a sponsoring entity, the Compliance Entity failed to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity under chapter 4;

(R) If WP is a foreign reverse hybrid entity, WP fails to prepare and retain the PFIC Annual Information Statement or Reconciliation Statement, as required under 6.03(C) of this Agreement; or

(S) WP is not in possession of valid documentation described in sections 4.01 through 4.09 of this Agreement for each direct partner as of the due date of the certification described in section 8.03 (C)(1) of this Agreement.

**Sec. 10.06. Notice and Cure.** Upon the occurrence of an event of default, the IRS will deliver to WP a notice of default specifying each event of default. WP must respond to the notice of default within 60 days (60-day response) from the date of the notice of default. The 60-day response shall contain an offer to cure the event of default and the time period in which to cure or shall state why WP believes that no event of default has occurred. If WP does not provide a 60-day response, the IRS will deliver a notice of termination as provided in section 10.02 of this Agreement. If WP provides a 60-day response, the IRS shall either accept or reject WP's statement that no default has occurred or WP's proposal to cure the event of default.

If the IRS rejects WP's statement that no default has occurred or rejects WP's

proposal to cure the event of default, the IRS may offer a counter-proposal to cure the event of default with which WP will be required to comply within 30 days. If WP fails to provide a 30-day response, the IRS will send a notice of termination in accordance with section 10.02 of this Agreement, which WP may appeal within 30 days of the date of the notice by sending a written appeal to the address specified in section 11.06 of this Agreement. If WP appeals the notice of termination, this Agreement shall not terminate until the appeal has been decided. If an event of default is discovered in the course of a review, WP may cure the default, without following the procedures of this section 10.06, if the external reviewer's report describes the default and the actions that WP took to cure the default and the IRS determines that the cure procedures followed by WP were sufficient. If the IRS determines that WP's actions to cure the default were not sufficient, the IRS shall issue a notice of default and the procedures described in this section 10.06 shall be followed.

**Sec. 10.07. Renewal.** If WP intends to renew this Agreement, it shall submit an application for renewal to the IRS on the QI/WP/WT Application and Account Management System. This Agreement will be renewed only upon the agreement of both WP and the IRS.

## **Section 11. MISCELLANEOUS PROVISIONS**

**Sec. 11.01.** WP's application to become a WP, the Appendix to this Agreement, and, if WP is an FFI, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI (or, if WP is a sponsoring entity, the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity) are hereby incorporated into and made an integral part of this Agreement. This Agreement, WP's application, and the Appendix to this Agreement constitute the complete agreement between the parties.

**Sec. 11.02.** This Agreement may be amended by the IRS if the IRS determines

that such amendment is needed for the sound administration of the internal revenue laws or internal revenue regulations. This Agreement will only be modified through published guidance issued by the IRS and U.S. Treasury Department. Any such modification imposing additional requirements will in no event become effective until the later of 90 days after the IRS provides notice of such modification or the beginning of the next calendar year following the publication of such guidance.

**Sec. 11.03.** Any waiver of a provision of this Agreement by the IRS 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.

**Sec. 11.04.** This Agreement shall be governed by the laws of the United States. Any legal action brought under this Agreement shall be brought only in a U.S. court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, WP agrees to submit to the jurisdiction of such U.S. court.

**Sec. 11.05.** WP's rights and responsibilities under this Agreement cannot be assigned to another person.

**Sec. 11.06.** Except as otherwise provided in the QI/WP/WT Application and Account Management System, notices provided under this Agreement shall be mailed registered, first class airmail. All notices sent to the IRS must include the WP's name, WP-EIN, GIIN (if applicable), and the name of its responsible officer. Such notices shall be directed as follows:

To the IRS:  
Internal Revenue Service  
Foreign Payments Practice  
Foreign Intermediaries Program  
290 Broadway, 12<sup>th</sup> Floor  
New York, NY 10007-1867

To WP:  
The WP's responsible officer. Such notices shall be sent to the address indicated in the WP's registration or application (as may be amended).

**Sec. 11.07.** WP, acting in its capacity as a withholding foreign partnership or in any

other capacity, does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

## **Section 12. EFFECTIVE DATE OF AGREEMENT**

### **Sec. 12.01. New Applicants.**

(A) *In General.* Applications for WP status received on or before March 31 of the calendar year, if approved, will be effective January 1 of that calendar year. If an entity submits an application to be a WP after March 31 and does not receive any reportable amounts between January 1 of the calendar year in which the WP application is submitted and the date of approval, the entity will have a WP agreement with an effective date of the date it is issued a WP-EIN. All other entities applying for WP status after March 31 that are approved during the calendar year will have a WP agreement with an effective date of January 1 of the following calendar year.

(B) *Calendar Year 2017.* If a WP is approved for WP status during calendar year 2017, the rules described in section 12.01(A) of this Agreement apply, except that the WP agreement effective from January 1, 2017, to the date of issuance of this revenue procedure will be the WP agreement in Revenue Procedure 2014-47, and the WP agreement provided in this revenue procedure will be effective beginning on the date of issuance of this revenue procedure.

### **Sec. 12.02. Renewal of WP Agreement.**

A WP that applies to renew its WP agreement provided in Revenue Procedure 2014-47 on or before March 31, 2017, will have a WP agreement with an effective date of the date of issuance of this revenue procedure.

## **APPENDIX TO WP AGREEMENT**

*General Instructions:* WPs must provide the information and certifications described in this Appendix as applicable to their WP status and activities. The following Parts must be completed by the specified WPs:

Parts I and II: All WPs.

Part III: WPs eligible pursuant to section 8.07 of the WP Agreement to apply for a waiver of the periodic review requirement (as described in section 8.07 of the WP Agreement) and who wish to apply for such a waiver. The following WPs are not eligible for a waiver: (a) WPs that are NFFEs, and (b) WPs that are part of a consolidated compliance program.

Part IV.A–G: All WPs that have not applied for or have not been approved for a waiver.

A Compliance Entity may complete Parts I and II for all WPs in its consolidated compliance program by providing aggregate information (where applicable). However, Part IV must be completed separately for each WP. If a Compliance Entity of a consolidated compliance program is completing this form, “WP” when used in Parts I and II means each WP that is a member of the consolidated compliance program.

#### *PART I. GENERAL INFORMATION*

A. Is this certification and information provided by a Compliance Entity of a consolidated compliance program? Y/N

1. If yes, provide the names and WP-EINs of the members of the consolidated compliance program.

B. Did WP make a pooled reporting election? Y/N

1. If this certification and information is provided by a Compliance Entity of a consolidated compliance program, provide the names and WP-EINs of each WP that made a pooled reporting election.

C. The number of partnerships or trusts to which WP applied the agency option (if none enter 0).

1. Each partnership or trust to which WP applied the agency option has provided WP with a certification that it has maintained status as a certified deemed-compliant FFI, an owner-documented FFI with respect to WP, an NFFE, or an exempt beneficial owner as required under section 9.02(A)(2) of the WP Agreement. Y/N

2. Each partnership or trust to which WP applied the agency option has provided WP with either (1) its documentation and other information for inclusion in WP’s periodic review (as described in section 9.02(A)(6) of the WP Agreement) or (2) a certification described in section 8.03 of the WP Agreement and the results of the periodic review described in section 8.06 of the WP Agreement for the certification period. Y/N

D. The number of partnerships or trusts to

which WP applied the joint account option (if none enter 0).

1. Each partnership or trust to which WP applies the joint account option has provided WP with a certification that it has maintained status as a certified deemed-compliant FFI, an owner-documented FFI with respect to WP, an exempt beneficial owner, or an NFFE as required under section 9.01(A)(1) of the WP Agreement. Y/N

#### *PART II: CERTIFICATION OF INTERNAL CONTROLS BY RESPONSIBLE OFFICER AND GENERAL INFORMATION*

Part II must be completed by all WPs. Complete either Section A (Certification of Effective Internal Controls) or Section B (Qualified Certification). All WPs complete Sections C, D, E, and F.

##### *A. Certification of Effective Internal Controls*

If the responsible officer has identified an event of default or a material failure that WP has not corrected as of the date of this certification (or if an event of default or material failure has otherwise been identified), the responsible officer cannot make the certification of effective internal controls under this Section A and must make the qualified certification under Section B, below.

The responsible officer certifies to the following, check each statement to confirm:

1. WP has established a compliance program that meets the requirements described in section 8.02(B) or 8.02(C) (if applicable) of the WP Agreement that is in effect as of the date of the certification and during the certification period.

2. Based on the information known (or information that reasonably should have been known) by the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer’s certification of internal controls, WP maintains effective internal controls over its documentation, withholding, and reporting obligations under the WP Agreement and according to its applicable FATCA requirements for partners for which it acts as a WP.

3. Based on the information known (or information that reasonably should have been known) by the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer’s certification of internal controls, there are no material failures, as defined in section 8.03(D) of the WP Agreement, or, if there are any material failures, they have been corrected as of the date of this certification, and such failures are identified as part of this certification as well as the actions taken to remediate them and to prevent their reoccurrence by the date of this certification. See Part II.D.2.a of this Appendix.

4. With respect to any failure to withhold, deposit, or report to the extent required under the WP Agreement, WP has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).

5. All partnerships and trusts to which WP applies the agency option have either (a) provided (or will provide, to the extent WP does not obtain a

waiver under section 8.07 of the WP Agreement) documentation and other necessary information for inclusion in the WP's periodic review or (b) provided the responsible officer of WP with a certification of effective internal controls described in Part II.A of this Appendix and have represented to WP that there are no material failures, as defined in section 8.03(D) of the WP Agreement, or, if there are such failures, they have been corrected as of the time of this certification, and the partnerships or trusts have disclosed any such failures to WP together with the actions taken by the partnership or trust to remediate such failures.

6. Unless WP has received a waiver, a periodic review was conducted for the certification period in accordance with section 8.04 of the WP Agreement, and the results of such review are reported to the extent required in section 8.06 of the WP Agreement.

#### *B. Qualified Certification*

If the responsible officer has identified (1) an event of default or (2) a material failure that WP has not corrected as of the date of this certification, check the applicable statements to confirm:

1. The responsible officer (or designee) has identified an event of default, as defined in section 10.05 of the WP Agreement, or has determined that, as of the date of the certification, there are one or more material failures as defined in section 8.03(D) of the WP Agreement with respect to WP's compliance or the compliance of a partnership or trust to which WP applies the agency option and that appropriate actions will be taken to prevent such failures from reoccurring.
2. With respect to any failure to withhold, deposit, or report to the extent required under the WP Agreement, WP will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).
3. The responsible officer (or an officer of the partnership or trust to which WP applies the agency option if the partnership or trust performs its own periodic review) will respond to any

notice of default (if applicable) or will provide (either directly or through WP) to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure.

#### *C. Amended Form 1042*

1. Did WP file an amended Form 1042 to report additional tax liability based on the results of the periodic review or the findings of any other procedure, process, or review undertaken by the responsible officer in preparation for the certification of internal controls? Y/N

#### *D. Material Failures or Event of Default*

1. Did the responsible officer determine that as of the date of the periodic review report (or the date of completion of any other procedure, process, or review), there are no material failures with respect to WP's compliance with the WP Agreement? Y/N
2. Did the responsible officer determine that as of the date of the periodic review report (or the date of completion of any other procedure, process, or review), there are one or more material failures with respect to WP's compliance with the WP Agreement and that appropriate actions have been or will be taken to prevent such failures from reoccurring? Y/N
  - a. If yes, check the following material failures that were identified. If a Compliance Entity is completing this certification for a consolidated compliance program, identify the WP(s) that had the material failure.
    - i. WP's establishment of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to WP's failure to comply with the WP Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.
    - ii. WP's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of WP to take ac-

tions consistent with WP's obligations under the WP Agreement.

- iii. A criminal or civil penalty or sanction imposed on WP by a regulator or other governmental authority or agency with oversight over WP's compliance with AML/KYC procedures, if applicable, to which WP is subject and that is imposed due to WP's failure to properly identify partners under the requirements of those procedures.
- iv. A finding (including a finding noted in the periodic review report described in section 8.06 of the WP Agreement) that, for one or more years covered by the WP Agreement, WP failed to:
  1. Withhold an amount that WP was required to withhold under chapter 3 or 4 as required under section 3 of the WP Agreement;
  2. Make deposits in the time and manner required by section 3.05 of the WP Agreement or make adequate deposits to satisfy its withholding obligations, taking into account the procedures under section 7 of the WP Agreement;
  3. Report or report accurately on Forms 1042 or 1042-S as required under sections 6.01 and 6.02 of the WP Agreement;
  4. Report or report accurately on Forms 8966 as required under section 6.05 of the WP Agreement; or
  5. Report or report accurately on Form 1065 and Schedules K-1 as required under section 6.03 of the WP Agreement.
- v. Other (include a detailed explanation).
3. The material failure(s) identified in the review has been corrected by the time of this certification. Y/N/NA

- a. If yes, describe the steps taken to correct the material failure.
  - b. If no, describe the proposed steps to be taken to correct the material failure and the time frame for completing such steps.
4. Did any partnerships or trusts to which WP applies the agency option inform WP that it has had a material failure with respect to its obligations as described in the WP Agreement? Y/N/NA
- a. If yes, provide the name of the partnership or trust and, based on the information provided by the partnership or trust, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the time-frame for completing such steps.
5. An event of default as defined in section 10.05 of the WP Agreement has been identified. Y/N
- a. If yes, identify the event of default. If a Compliance Entity is completing this certification for a consolidated compliance program, identify the WP(s) that had the event of default.
    - i. WP failed to implement adequate procedures, accounting systems, and internal controls to ensure compliance with the WP Agreement;
    - ii. WP underwithheld a material amount of tax that WP was required to withhold under chapter 3 or 4 and failed to correct the underwithholding or to file an amended Form 1042 reporting, and paying, the appropriate tax;
    - iii. WP made excessive refund claims;
    - iv. WP failed to file required Forms 1042, 1042-S, 8966, 1065, or Schedules K-1 by the due date specified on such forms or filed forms that are materially incorrect or fraudulent;
    - v. If WP is an FFI, WP failed to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;
    - vi. If WP is a sponsoring entity of a sponsored FFI (other than a WP) or a sponsored direct re-

- porting NFFE, WP failed to materially comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;
- vii. With respect to a consolidated compliance program under section 8.02(C) of the WP agreement, the Compliance Entity failed to comply with the obligations of a Compliance Entity under section 8.02(C) of the WP Agreement, or, if the Compliance Entity is a sponsoring entity, the Compliance Entity failed to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity under chapter 4;
- viii. WP failed to perform a periodic review when required or to document the findings of such review in a written report;
- ix. WP failed to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects WP's obligations under the WP Agreement;
- x. WP failed to cure a material failure identified in the qualified certification described in Part II.B of this Appendix or identified by the IRS;
- xi. WP made any fraudulent statement or a misrepresentation of material fact with regard to the WP Agreement to the IRS, a withholding agent, or WP's reviewer;
- xii. The IRS determined that WP's reviewer is not sufficiently independent, as described in the WP Agreement, to adequately perform its review function, and WP failed to arrange for a periodic review conducted by a reviewer approved by the IRS;
- xiii. WP failed to make deposits in the time and manner required by section 3.05 of the WP Agreement or failed to make adequate deposits, taking into account the procedures of section 7.05 of the WP Agreement;
- xiv. If applicable, WP failed to inform the IRS of any change in the applicable know-your-customer rules within 90 days of the change becoming effective

- when WP relied on documentary evidence as permitted in section 4.01(A) of the WP Agreement;
- xv. A partnership or trust to which WP applied the agency option was in default with the agency agreement and WP failed to terminate that agreement within the time period specified in section 9.02 of the WP Agreement;
- xvi. WP failed to materially comply with the requirements of a non-withholding foreign partnership under chapter 3 with respect to any partner for which WP does not act as a withholding foreign partnership;
- xvii. If WP is a foreign reverse hybrid entity, WP failed to prepare and retain the PFIC Annual Information Statement or reconciliation statement, as required under 6.03(C) of the WP Agreement;
- xviii. WP is not in possession of valid documentation described in sections 4.01 through 4.09 of the WP Agreement for each direct partner as of the due date of this certification; or
- xix. Other (please describe).

#### *E. Significant Change in Circumstances*

Check the applicable statements to confirm.

1. For the most recent certification period, the periodic review (or any other procedure, process, or review) has not identified any significant change in circumstances, as described in section 10.04(A), (D), or (E) of the WP Agreement.
2. For the most recent certification period, the periodic review has identified the following significant change(s) in circumstances:
  - a. Any change in circumstances that would result in a termination of WP under section 708 of the Code.
  - b. A significant change in WP's business practices that affects WP's ability to meet its obligations under the WP Agreement.
  - c. If applicable, a material change in the applicable know-your-customer rules and procedures when WP relied on documentary

evidence as permitted in section 4.01(A) of the WP Agreement.

d. Other (please describe).

3. Describe any significant changes in circumstances identified in Question 2.

#### F. Chapter 4 Status

1. If this certification is submitted by a Compliance Entity of a consolidated compliance program that is a sponsoring entity, check the following statement to confirm.

For the most recent certification period under the WP Agreement, the sponsoring entity has made or will make the following certification of compliance with respect to its requirements as a sponsoring entity for chapter 4 purposes with respect to each WP that is a sponsored FFI for which it acts during the most recent certification period under the WP Agreement (check one).

- a. Certification of Effective Internal Controls
- b. Qualified Certification
2. All other WPs, complete the applicable section (if any) and check the applicable statement to confirm.

a. If WP is a participating FFI:

For the most recent certification period under its WP Agreement, WP has obtained (or maintained) status as a participating FFI and has made the following certification of compliance with respect to its FFI agreement for the most recent certification period under the FFI agreement (check one).

*Note: You may check Not Applicable if, during the certification period under the WP Agreement, your chapter 4 status changed from one of the other applicable chapter 4 statuses to participating FFI or if your certification of compliance under the FFI agreement is not yet due as of the date of this certification.*

- i. Certification of Effective Internal Controls
- ii. Qualified Certification
- iii. Not Applicable

b. If WP is a registered deemed-compliant FFI:

For the most recent certification period under its WP Agreement, WP has certified as required under § 1.1471-5(f)(1)(ii)(B) or Annex II of an applicable Model

2 IGA that it has satisfied the requirements of the deemed-compliant status claimed.

c. If WP is a registered deemed-compliant Model 1 IGA FFI:

For the most recent certification period under its WP Agreement, WP has been resident in or organized under the laws of a jurisdiction that has in place a Model 1 IGA with the United States and has met the requirements under an applicable Model 1 IGA to be treated as a deemed-compliant FFI.

d. If WP is a retirement fund:

For the most recent certification period under the WP Agreement, WP has been a retirement fund or other fund that is an exempt beneficial owner described in § 1.1471-6(f) or a similar fund that qualifies as an exempt beneficial owner under an applicable Model 1 IGA or Model 2 IGA.

#### PART III. WAIVER OF PERIODIC REVIEW

For purposes of this Part III, “partner” means, unless otherwise specified, any partner for which WP acts as a WP.

*For sections B.1 through 6 of this Part III, while the curing of inadequate documentation is permissible, the information reported in these sections must not reflect any remediation or curing.*

*In order to be eligible for a waiver, WP must be able to confirm all of the eligibility requirements in Section A are met.*

A. Eligibility for Waiver (check each statement to confirm)

1. WP is an FFI.
2. WP is not part of a consolidated compliance program.
3. For each calendar year in the certification period, the reportable amounts received by WP do not exceed \$1 million.
4. WP timely filed its Forms 1042, 1042-S, 8966 (or, if WP is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to an applicable Model 1 IGA), 1065, and Schedules K-1, as applicable, for all years (fiscal or calendar) in the certification period.
5. WP made all periodic certifications and reviews required by sections 8.02

and 8.03 of the WP Agreement as well as any certifications required pursuant to WP’s FATCA requirements as a participating FFI or registered deemed-compliant FFI.

6. WP made the certification of effective internal controls in Part II.A.

B. Information required (provided for the most recent year in the certification period for which filing has been made by the time of this waiver request)

1. The total number of partners
  - a. Total number of direct partners
    - i. Foreign persons
    - ii. U.S. persons
    - iii. Foreign intermediaries and flow-through entities
  - b. Total number of indirect partners
    - i. Foreign persons
    - ii. U.S. persons
    - iii. Foreign intermediaries and flow-through entities
2. The total number of non-U.S. partners that received reportable amounts
  - a. The total number of such partners that have valid documentation.
  - b. The total number of such partners that have no documentation or invalid documentation.
3. The aggregate amount of reportable amounts received for non-U.S. partners
4. The total number of Forms 1042-S filed by WP.
5. The total number of Schedules K-1 filed by WP.
6. The aggregate amount of tax withheld under chapter 3.
7. The aggregate amount of tax withheld under chapter 4.
8. The aggregate amount of withheld tax deposited by WP.

#### PART IV. PERIODIC REVIEW: WP FACTUAL INFORMATION

This Part IV must be completed by all WPs that have not received a waiver. If a Compliance Entity is completing this form for WPs in its consolidated compliance program, complete Part IV separately for each WP.

For purposes of this Part IV, “partner” means, unless otherwise specified, any direct or indirect partner for which WP acts as a withholding foreign partnership.

*For Sections B through G of this Part IV,*

while the curing of inadequate documentation is permissible, unless otherwise indicated, the information reported shall be based on the review and not results obtained after curing.

#### A. General Information

1. Did WP use an external reviewer to conduct any portion of its periodic review? Y/N
  - a. If yes, provide the name(s) of reviewer(s) and the name and address of the firm at which the reviewer is employed.
2. Did WP use an internal reviewer to conduct any portion of its periodic review? Y/N
  - a. If yes, provide a brief description of the internal reviewer, such as their department and other roles and responsibilities with respect to the WP's WP activities.
3. Calendar year reviewed for periodic review.

*Caution: On the due date for reporting the factual information relating to the periodic review (provided in section 8.04 of the WP Agreement), there must be 15 or more months available on the statutory period for assessment for taxes reportable on Form 1042 of the calendar year for which the review was conducted or the WP must submit, upon request by the IRS, a Form 872, "Consent to Extend the Time to Assess Tax," that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 11.06 of the WP Agreement.*

#### B. General Information on Partners and Review of Partners

1. Total partners reviewed for periodic review.

*Note: WP must review all partners that received a distribution, or included in their distributive share, of a reportable amount that is attributable to an amount paid to WP in the year under review.*

#### C. Documentation

1. Total partners reviewed that are direct partners.
2. Total partners reviewed that are indirect partners.

3. Total partners reviewed with valid documentation.
4. Total partners reviewed with invalid documentation or no documentation.
5. Total partners reviewed with invalid documentation or no documentation for which valid documentation or additional valid documentation was obtained after the review.
6. Total direct partners reviewed for which WP had no documentation at any time that withholding or reporting was required under section 3.02 of the WP Agreement.
7. Total direct partners in question 6 for which valid documentation (that relates to the time withholding or reporting was required) was obtained by WP for each such undocumented direct partner before March 15 of the year following the year in which the WP Agreement was automatically terminated under section 10.03(A) of the WP Agreement.
8. Total partners reviewed for which treaty benefits were claimed.
9. Total partners reviewed for which treaty benefits were claimed where WP did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 4.03(B) of the WP Agreement).
10. Total partners reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable Model 1 IGA) for chapter 4 purposes.
11. Total partners reviewed that are U.S. accounts for chapter 4 purposes (or U.S. reportable accounts under an applicable Model 1 IGA) for which WP has obtained valid documentation.
12. If WP is an NFFE, total partners reviewed that are passive NFFEs with substantial U.S. owners.

#### D. Withholding

1. The aggregate amount reported as withheld under chapter 3 by WP on Forms 1042-S.
2. Number of partners for which amounts were withheld under chapter 3 (excluding partners reported in question 10(a) or 11(a) below).
3. The aggregate amount reported as withheld under chapter 4 by WP on Forms 1042-S.
4. Number of partners for which amounts were withheld under chapter 4 (excluding partners reported in question 10(a) or 11(a) below).
5. The aggregate amount reported as withheld by WP on Form 1042 under chapter 3 or 4.
6. Additional withholding required under chapter 4 based on the results of the periodic review (excluding withholding reported in question 10(d) or 11(d) below).
7. Additional withholding required under chapter 3 based on the results of the periodic review (excluding withholding reported in question 10(d) or 11(d) below).
8. The aggregate amount of deposits made by WP in accordance with section 3.05 of the WP Agreement.
9. The aggregate amount withheld by WP but not timely deposited.
10. Number of partnerships or trusts to which the joint account option of section 9.01 of the WP Agreement was applied (if applicable).
  - a. Total partners, beneficiaries, or owners of a partnership or trust to which the joint account option applied for which appropriate documentation was obtained and the appropriate rate of withholding was applied.
  - b. Total partners, beneficiaries, or owners of a partnership or trust to which the joint account option applied for which appropriate documentation was obtained and the appropriate rate of withholding was not applied.

- c. Total partners, beneficiaries, or owners of a partnership or trust to which the joint account option applied for which appropriate documentation was not obtained and the appropriate rate of withholding was not applied.
  - d. Aggregate amount of underwithholding resulting from the appropriate rate of withholding not being applied with respect to a partner, beneficiary, or owner of a partnership or trust to which the joint account option applied.
11. Number of partnerships or trusts to which the agency option of section 9.02 of the WP Agreement was applied (if WP includes the partnership or trust in WP's periodic review).
- a. Total partners, beneficiaries, or owners of a partnership or trust to which the agency option applied for which appropriate documentation was obtained and the appropriate rate of withholding was applied.
  - b. Total partners, beneficiaries, or owners of a partnership or trust to which the agency option applied for which appropriate documentation was obtained and the appropriate rate of withholding was not applied.
  - c. Total partners, beneficiaries, or owners of a partnership or trust to which the agency option applied for which appropriate documentation was not obtained and the appropriate rate of withholding was not applied.
  - d. Aggregate amount of underwithholding resulting from the appropriate rate of withholding not being applied with respect to a partner, beneficiary, or owner of a partnership or trust to which the agency option applied.

*E. Reconciliation of Amounts Reported on Forms 1042-S*

1. The aggregate amount reported paid to WP during the year under review on all Forms 1042-S issued to WP (acting as a withholding foreign partnership).
2. The aggregate amount reported by WP on Forms 1042-S as distributed to, or included in the distributive share of, partners that are included in WP's chapter 4 reporting pools (other than the U.S. payee pool) (including a chapter 4 reporting pool of a partnership or trust to which WP applies the agency option) to the extent such amount is attributable to an amount paid to WP in the year under review.
3. The aggregate amount reported by WP on Forms 1042-S as distributed to, or included in the distributive share of, WP's chapter 4 reporting pool- U.S. payee pool to the extent such amount is attributable to an amount paid to WP in the year under review.
4. If WP made a pooled reporting election under section 6.02(D) of the WP Agreement, the aggregate amount reported by WP on Forms 1042-S as distributed to, or included in the distributive share of, WP's chapter 3 reporting pools (including chapter 3 reporting pools of a partnership or trust to which WP applies the joint account or agency option) to the extent such amount is attributable to an amount paid to WP in the year under review.
5. If WP did not make a pooled reporting election, the aggregate amount of reported by WP on Forms 1042-S as distributed to, or included in the distributive share of, each direct partner (other than a passthrough partner) (not included in question 2 or 3 above) to the extent such amount is attributable to an amount paid to WP in the year under review (excluding an amount reported in question 6 below).
6. The aggregate amount reported by WP on Forms 1042-S as distributed to, or included in the distributive share of, other WPs, WTs, and

QIs as a class to the extent such amount is attributable to an amount paid to WP in the year under review.

7. The aggregate amount reported by WP on Forms 1042-S as distributed to, or included in the distributive share of, participating FFIs, registered deemed-compliant FFIs, and registered deemed-compliant Model 1 IGA FFIs that are passthrough partners to which WP applies section 9.03 of the WP Agreement as a class with respect to their chapter 4 reporting pools to the extent such amount is attributable to an amount paid to WP in the year under review (excluding amounts included in question 6 above).
8. The aggregate amount reported by WP on Forms 1042-S as distributed to, or included in the distributive share of, indirect partners (not included in any of the questions above) to which WP applies section 9.03 of the WP Agreement to the extent such amount is attributable to an amount paid to WP in the year under review.
9. The aggregate amount subject to chapter 3 withholding that WP distributed to, or included in the distributive share of, U.S. partners not included in a chapter 4 withholding rate pool to the extent such amount is attributable to an amount paid to WP in the year under review.
10. The aggregate amount distributed to, or included in the distributive share of, direct partners of WP (including partners, beneficiaries, or owners of a partnership or trust to which WP applies the joint account or agency option) that requested individual Form(s) 1042-S and direct partners that were issued Forms 1042-S under section 6.02(B)(8) of the WP Agreement (excluding an amount reported in question 4 above).
11. Total of questions 2 through 10.
12. The amount of any unreconciled variances (if question 1 minus question 11 is other than 0).
13. The aggregate amount reported by WP on Form 1042 as distributed to, or included in the distributive

share of, partners of WP to the extent such amount is attributable to an amount paid to WP in the year under review.

14. The amount of any unreconciled variances of amounts reported by WP on Forms 1042 and 1042-S (question 13 minus the total of questions 2 through 8).
15. The aggregate amount of any collective claims for refund or credit made by WP.

#### *F. Reporting of Reportable Amounts Other Than Amounts Subject to Chapter 3 Withholding*

1. The aggregate amount of reportable amounts other than amounts subject to chapter 3 withholding received by WP.
2. The aggregate amount of reportable amounts other than amounts subject to chapter 3 withholding distributed to, or included in the distributive share of, a direct partner that is a U.S. person.
3. Number of direct partners that are U.S. persons that are not reported on Schedules K-1 to Form 1065 or under WP's FATCA requirements (if none enter 0).

#### *G. Reporting on Form 1065 and Schedules K-1*

*WPs that are exempt from filing Schedules K-1 under section 6.03(B) (Modified Filing Obligations) or 6.03(C) (Foreign Reverse Hybrid Entities) of the WP Agreement should not complete this section G.*

1. The total number of Schedules K-1 issued by WP to partners that are U.S. persons for the year under review.
2. The total number of Schedules K-1 issued by WP to partners that are foreign persons for the year under review.
3. The aggregate amount of special allocations to partners that are foreign persons for the year under review (if none enter 0).

### **SECTION 7. WITHHOLDING FOREIGN TRUST AGREEMENT**

- Section 1. PURPOSE AND SCOPE
- Section 2. DEFINITIONS

#### Section 3. WITHHOLDING RESPONSIBILITY

#### Section 4. DOCUMENTATION REQUIREMENTS

#### Section 5. WITHHOLDING FOREIGN TRUST WITHHOLDING CERTIFICATE

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

#### Section 7. ADJUSTMENTS FOR OVER- AND UNDERWITHHOLDING; REFUNDS

#### Section 8. COMPLIANCE PROCEDURES

#### Section 9. CERTAIN PARTNERSHIPS AND TRUSTS AND INDIRECT BENEFICIARIES AND OWNERS

#### Section 10. EXPIRATION, TERMINATION AND DEFAULT

#### Section 11. MISCELLANEOUS PROVISIONS

#### Section 12. EFFECTIVE DATE OF AGREEMENT

The text of the WT agreement is set forth below. The IRS will not provide signed copies of the WT agreement. A reporting Model 2 FFI should interpret this Agreement by substituting the term "reporting Model 2 FFI" for "participating FFI" throughout this Agreement, except in cases where this Agreement explicitly refers to a reporting Model 2 FFI. A reporting Model 1 FFI and a nonreporting Model 2 FFI treated as a registered deemed-compliant FFI should apply this Agreement by substituting the term "reporting Model 1 FFI" or "nonreporting Model 2 FFI," as applicable, for "registered deemed-compliant FFI" throughout this Agreement, except in cases where this Agreement explicitly refers to a reporting Model 1 FFI or nonreporting Model 2 FFI treated as a registered deemed-compliant FFI.

**WHEREAS**, WT has submitted an application in accordance with this revenue procedure to be a withholding foreign trust for purposes of § 1.1441-5(e)(5)(v);

**WHEREAS**, WT and the IRS desire to enter into an agreement to establish WT's rights and obligations regarding documentation, withholding, information reporting, tax return filing, deposits, and refund procedures under sections 1441, 1442, 1443, 1461, 1471, 1472, 1474,

6048, 6302, 6402, and 6414 with respect to certain types of payments;

**WHEREAS**, WT represents that there are no legal restrictions that prohibit it from complying with the requirements of this Agreement;

**WHEREAS**, if WT is a foreign financial institution (other than a retirement fund), WT represents that it has agreed to comply with the requirements of the FFI agreement, in the case of a participating FFI (including a reporting Model 2 FFI); § 1.1471-5(f)(1) or the applicable Model 2 IGA, in the case of a registered deemed-compliant FFI (other than a reporting Model 1 FFI); or an applicable Model 1 IGA, in the case of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI beginning on the effective date of this Agreement;

**NOW, THEREFORE**, in consideration of the following terms, representations, and conditions, the parties agree as follows:

#### **Section 1. PURPOSE AND SCOPE**

**Sec. 1.01. General Obligations.** When the IRS enters into a WT agreement with a foreign person, that foreign person becomes a WT. Except as otherwise provided in this Agreement, WT's obligations with respect to income distributed to, or included in the distributive shares of, its beneficiaries or owners are governed by the Internal Revenue Code and the regulations thereunder. WT must act in its capacity as a withholding foreign trust pursuant to this Agreement for reportable amounts that are distributed to, or included in the distributive share of, WT's direct beneficiaries or owners. WT may also act as a withholding foreign trust for reportable amounts that are distributed to, or included in the distributive share of, a partner, beneficiary, or owner of a pass-through beneficiary or owner (i.e., an indirect beneficiary or owner of WT) if such indirect beneficiary or owner is not a U.S. non-exempt recipient. Notwithstanding the preceding sentence, a WT may act as a withholding foreign trust for an indirect beneficiary or owner that is a U.S. non-exempt recipient if such beneficiary or owner is included in the passthrough beneficiary's or owner's chapter 4 withholding rate pool (as defined in section 2.14 of this Agreement) of U.S. payees or recal-

citant account holders provided on the FFI withholding statement (as defined in section 2.26 of this Agreement) of the passthrough beneficiary or owner.

WT is not required to act as a withholding foreign trust for payments that it distributes to, or includes in the distributive share of, a passthrough beneficiary or owner or indirect beneficiary or owner. With respect to an indirect beneficiary or owner for which WT does not (or cannot) act as a withholding foreign trust, WT must, as part of its WT agreement, comply with the requirements of a withholding agent, as applicable to a nonwithholding foreign trust under chapters 3 and 4. WT (regardless of whether it is an FFI or NFFE) must also, pursuant to this Agreement, assume primary reporting responsibility for purposes of section 1472.

If WT is an FFI, the requirements WT has agreed to as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI apply in addition to the requirements under this Agreement except to the extent specifically modified by this Agreement. This Agreement references WT's FATCA requirements when necessary to facilitate coordination with a WT's obligations under this Agreement with respect to its beneficiaries or owners. A participating FFI's obligations are provided in the FFI agreement, a registered deemed-compliant FFI's (other than a reporting Model 1 FFI's) obligations are provided in § 1.1471-5(f)(1) or the applicable Model 2 IGA, and the obligations of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI are provided in the applicable Model 1 IGA.

If WT is an NFFE, WT must comply with the requirements of a withholding agent under sections 1471 and 1472 which are provided in this Agreement.

If a WT acts as a sponsoring entity on behalf of a sponsored FFI or sponsored direct reporting NFFE, it must comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity in addition to its requirements under this Agreement.

**Sec. 1.02. Parties to the Agreement.** This Agreement applies to WT and the IRS.

## Section 2. DEFINITIONS

For purposes of this Agreement, unless otherwise specified in this Agreement, the terms listed below are defined as follows. Any term not defined in this section has the same meaning that it has under the Code, including the income tax regulations under the Code, any applicable income tax treaty, or any applicable Model 1 IGA or Model 2 IGA with respect to WT's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

**Sec. 2.01. Account.** "Account" has the meaning given to that term in § 1.1471-1(b)(1) with respect to WT's FATCA requirements.

**Sec. 2.02. Account Holder.** "Account Holder" has the meaning given to that term in § 1.1471-1(b)(2) with respect to WT's FATCA requirements with respect to an account that it maintains within the meaning of § 1.1471-5(b)(5).

**Sec. 2.03. Agreement.** "Agreement" means this Agreement between WT and the IRS, the Appendix to this Agreement, and WT's application to become a withholding foreign trust. The Appendix to this Agreement and WT's application are incorporated into this Agreement by reference.

**Sec. 2.04. Amount Subject to Chapter 3 Withholding.** An "amount subject to chapter 3 withholding" is an amount described in § 1.1441-2(a), regardless of whether such amount is withheld upon.

**Sec. 2.05. Amount Subject to Chapter 4 Withholding.** An "amount subject to chapter 4 withholding" is a withholdable payment (as defined in section 2.79 of this Agreement) for which withholding is required under chapter 4 or an amount for which withholding was otherwise applied under chapter 4.

**Sec. 2.06. Assuming Primary Withholding Responsibility.** "Assuming primary withholding responsibility" refers to when a WT assumes primary chapters 3 and 4 withholding responsibility with respect to amounts subject to chapter 3 or 4 withholding under the terms of the WT agreement. Generally, a WT assuming primary chapters 3 and 4 withholding responsibility relieves the person who makes a payment to the WT from the responsibility to

withhold. See sections 3.03 and 3.04 of this Agreement for when WT is required to withhold under this Agreement.

**Sec. 2.07. Beneficial Owner.** A "beneficial owner" has the meaning given to that term in § 1.1441-1(c)(6).

**Sec. 2.08. Certified Deemed-Compliant FFI.** "Certified deemed-compliant FFI" means an FFI described in § 1.1471-5(f)(2), and includes a nonreporting Model 1 FFI and a nonreporting Model 2 FFI that is treated as a certified deemed-compliant FFI.

**Sec. 2.08. Chapter 3.** Any reference to "chapter 3 of the Code" or "chapter 3" means sections 1441, 1442, 1443, 1461, 1463, and 1464.

**Sec. 2.09. Chapter 3 Reporting Pool.** A chapter 3 reporting pool means a reporting pool described in section 6.02(D) of this Agreement.

**Sec. 2.10. Chapter 3 Status.** The term "chapter 3 status" refers to the attributes of a payee (and a beneficiary or owner of WT for purposes of this Agreement) relevant for determining the rate of withholding with respect to a payment made to the payee for purposes of chapter 3.

**Sec. 2.11. Chapter 4.** Any reference to "chapter 4 of the Code" or "chapter 4" means sections 1471, 1472, 1473, and 1474.

**Sec. 2.12. Chapter 4 Reporting Pool.** A chapter 4 reporting pool means a reporting pool described in section 6.02(C) of this Agreement.

**Sec. 2.13. Chapter 4 Status.** "Chapter 4 status" means the status of a person as a U.S. person, specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE, or a passive NFFE.

**Sec. 2.14. Chapter 4 Withholding Rate Pool.** A "chapter 4 withholding rate pool" means a pool of payees that are nonparticipating FFIs provided on a chapter 4 withholding statement (as described in § 1.1471-3(c)(3)(iii)(B)(3)) to which a withholdable payment is allocated. The term chapter 4 withholding rate pool also means a pool of payees provided on an FFI withholding statement (as described in § 1.1471-3(c)(3)(iii)(B)(2)) to which a withholdable payment is allocated to —

(A) A pool of payees consisting of each class of recalcitrant account holders described in § 1.1471-4(d)(6) (or with respect to an FFI that is a QI, a single pool of recalcitrant account holders that is not subdivided into classes of recalcitrant account holders described in § 1.1471-4(d)(6)), including a separate pool of account holders to which the escrow procedures for dormant accounts apply; or (B) A pool of payees that are U.S. persons as described in § 1.1471-3(c)(3)(iii)(B)(2).

**Sec. 2.15. Deemed-Compliant FFI.** “Deemed-compliant FFI” means a certified deemed-compliant FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI that is treated, pursuant to section 1471(b)(2) and § 1.1471-5(f), as meeting the requirements of section 1471(b). For the definition of certified deemed-compliant FFI, see section 2.08 of this Agreement. For the definition of registered deemed-compliant FFI, see section 2.61 of this Agreement. For the definition of registered deemed-compliant Model 1 IGA FFI, see section 2.62 of this Agreement.

**Sec. 2.16. Direct Beneficiary or Owner.** A “direct beneficiary or owner” means a beneficiary or owner that is not an indirect beneficiary or owner (as defined in section 2.39 of this Agreement).

**Sec. 2.17. Distributive Share.** “Distributive share” means an amount subject to chapter 3 withholding or an amount of a withholdable payment that is required to be distributed to the beneficiaries of a simple trust and an amount subject to chapter 3 withholding or an amount that is a withholdable payment includible in the income of the owners of a grantor trust.

**Sec. 2.18. Documentary Evidence.** “Documentary evidence” means any documentation obtained under the appropriate know-your-customer rules (as defined in section 2.41 of this Agreement), or any documentary evidence described in § 1.1441-6 sufficient to establish entitlement to a reduced rate of withholding under an income tax treaty. Documentary evidence does not include a Form W-8 or Form W-9 (or an acceptable substitute Form W-8 or Form W-9).

**Sec. 2.19. Documentation.** “Documentation” means any valid Form W-8, Form W-9 (or acceptable substitute Form W-8

or Form W-9), or documentary evidence, as defined in section 2.18 of this Agreement, including all statements or other information required to be associated with the form or documentary evidence.

**Sec. 2.20. Excepted NFFE.** “Excepted NFFE” means a person described in § 1.1471-1(b)(41).

**Sec. 2.21. Exempt Beneficial Owner.** “Exempt beneficial owner” means a person described in § 1.1471-1(b)(42) and includes any person that is treated as an exempt beneficial owner under an applicable Model 1 IGA or Model 2 IGA.

**Sec. 2.22. Exempt Recipient.** An “exempt recipient” means a person described in § 1.6049-4(c)(1)(ii) (for interest, dividends, and royalties), a person described in § 1.6045-2(b)(2)(i) (for broker proceeds), and a person described in § 1.6041-3(p) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income), for which no Form 1099 reporting is required. Exempt recipients are not exempt from reporting or withholding under chapter 3 or 4.

**Sec. 2.23. FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI.** “FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI” means:

(A) For a participating FFI, the requirements set forth in the FFI agreement;

(B) For a registered deemed-compliant FFI (other than a reporting Model 1 FFI), the requirements under § 1.1471-5(f)(1) or the applicable Model 2 IGA; or

(C) For a reporting Model 1 FFI and a registered deemed-compliant Model 1 IGA FFI, the requirements under applicable foreign law to implement the applicable Model 1 IGA.

**Sec. 2.24. Financial Institution (FI).** “Financial institution” or “FI” has the meaning set forth in § 1.1471-5(e) and includes a financial institution as defined under an applicable Model 1 IGA or Model 2 IGA.

**Sec. 2.25. FFI Agreement.** “FFI agreement” means an agreement of a participating FFI described in § 1.1471-4(a) and published in Revenue Procedure 2017-16, 2017-03 I.R.B.501 (as updated or super-

seded by any subsequent revenue procedure).

**Sec. 2.26. FFI Withholding Statement.** An “FFI withholding statement” means a withholding statement provided by an FFI that meets the requirements of § 1.1471-3(c)(3)(iii)(B)(1) and (2).

**Sec. 2.27. Flow-Through Entity.** A “flow-through entity” is a foreign partnership described in § 301.7701-2 or 3 (other than a withholding foreign partnership), a foreign trust that is described in section 651(a) (other than a withholding foreign trust), or a foreign trust if all or a portion of such trust is treated as owned by the grantor or other person under sections 671 through 679. With respect to an item of U.S. source FDAP income for which a treaty benefit is claimed, an entity is also a flow-through entity to the extent it is treated as fiscally transparent under section 894 and the regulations thereunder.

**Sec. 2.28. Foreign Financial Institution (FFI).** “Foreign financial institution” or “FFI” has the meaning set forth in § 1.1471-5(d).

**Sec. 2.29. Foreign TIN.** A “foreign TIN” is a taxpayer identification number issued by a foreign person’s country of residence.

**Sec. 2.30. Foreign Person.** A “foreign person” is any person that is not a U.S. person and includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, and a foreign estate, as those terms are defined in section 7701 of the Code. For purposes of chapters 3 and 4, the term “foreign person” also means, with respect to a payment by a withholding agent, a foreign branch (including a foreign disregarded entity) of a U.S. person that provides a valid Form W-8IMY on which it represents that it is a QI.

**Sec. 2.31. Form W-8.** “Form W-8” means IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals); IRS Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities), IRS Form W-8ECI, Certificate of Foreign Person’s Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States; IRS Form W-8EXP, Certificate of Foreign Government or Other Foreign Or-

ganization for United States Tax Withholding and Reporting; and IRS Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting, as appropriate. It also includes any acceptable substitute Form W-8 as described under §§ 1.1441-1(e)(4)(vi) and 1.1471-3(c)(6)(v).

**Sec. 2.32. Form W-9.** “Form W-9” means IRS Form W-9, Request for Taxpayer Identification Number and Certification, or any acceptable substitute Form W-9 as described under § 31.3406(h)-3(c).

**Sec. 2.33. Form 1042.** “Form 1042” means IRS Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

**Sec. 2.34. Form 1042-S.** “Form 1042-S” means IRS Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding.

**Sec. 2.35. 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.

**Sec. 2.36. Form 3520-A, Owner Statement, Beneficiary Statement, and Statement Required Under Section 6048(b).** “Form 3520-A” means IRS Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner. “Owner Statement,” when referred to in connection with Form 3520-A, means a Foreign Grantor Trust Owner Statement. “Beneficiary Statement,” when referred to in connection with Form 3520-A, means a Foreign Grantor Trust Beneficiary Statement. The “statement required under section 6048(b)” means the Owner Statement and Beneficiary Statement.

**Sec. 2.37. Form 8966.** “Form 8966” means IRS Form 8966, FATCA Report.

**Sec. 2.38. Global Intermediary Identification Number (GIIN).** “Global intermediary identification number” or “GIIN” means the identification number that is assigned by the IRS to a participating FFI,

registered deemed-compliant FFI, direct reporting NFFE, or sponsoring entity. The term also includes the identification number assigned by the IRS to a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI for the purpose of identifying itself to withholding agents.

**Sec. 2.39. Indirect Beneficiary or Owner.** An “indirect beneficiary or owner” is a person that owns an interest in WT through one or more passthrough beneficiaries or owners (as defined in section 2.54 of this Agreement). For example, a person that holds an account with a foreign intermediary or an interest in a flow-through entity which intermediary or flow-through entity, in turn, is a direct beneficiary or owner of WT is an indirect beneficiary or owner in WT. A person is an indirect beneficiary or owner of WT even if there are multiple tiers of intermediaries or flow-through entities between the person and WT.

**Sec. 2.40. Intermediary.** An “intermediary” means a person that, for that payment, acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether such other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.

**Sec. 2.41. Know-Your-Customer Rules.** “Know-your-customer rules” refers to the applicable laws, regulations, rules, and administrative practices and procedures governing the requirements of certain WTs that are FFIs to obtain documentation confirming the identity of WT’s direct beneficiaries or owners. A list of jurisdictions for which the IRS has received know-your-customer information and for which the know-your-customer rules and specified documentation are acceptable is available at: <http://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules>.

**Sec. 2.42. Marketable Securities.** For purposes of this Agreement, the term “marketable securities” means those securities described in § 1.1441-6 for which a U.S. TIN or foreign TIN is not required to be provided by the beneficial owner to obtain treaty benefits.

**Sec. 2.43. 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 the applicable Model 2 IGA.

**Sec. 2.44. Non-Exempt Recipient.** A “non-exempt recipient” means a person that is not an exempt recipient under the definition in section 2.22 of this Agreement.

**Sec. 2.45. Non-Financial Foreign Entity (NFFE).** A “non-financial foreign entity” or “NFFE” means a foreign entity that is not a financial institution (including an entity that is incorporated or organized under the laws of any U.S. territory and that is not a financial institution). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.

**Sec. 2.46. Nonparticipating FFI.** A “nonparticipating FFI” means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

**Sec. 2.47. Nonqualified Intermediary.** A “nonqualified intermediary” is any intermediary that is not a qualified intermediary. A nonqualified intermediary includes any intermediary that is a foreign person unless such person enters an agreement to be a qualified intermediary and acts in such capacity. A nonqualified intermediary also includes an intermediary that is a territory financial institution (as defined in § 1.1471-1(b)(130)) unless such institution agrees to be treated as a U.S. person.

**Sec. 2.48. Nonreporting Model 1 FFI.** A “nonreporting Model 1 FFI” means a nonreporting financial institution described in Annex II of a Model 1 IGA.

**Sec. 2.49. Nonreporting Model 2 FFI.** A “nonreporting Model 2 FFI” means a nonreporting financial institution described in Annex II of a Model 2 IGA.

**Sec. 2.50. Nonwithholding Foreign Partnership (NWP).** A “nonwithholding foreign partnership” means a foreign partnership other than a withholding foreign partnership as defined in § 1.1441-5(c)(2).

**Sec. 2.51. Nonwithholding Foreign Trust (NWT).** A “nonwithholding foreign trust” means a foreign trust (as defined in section 7701(a)(31)(B)) that is a foreign simple trust or a foreign grantor trust and that is not a withholding foreign trust (as defined in section 2.82 of this Agreement).

**Sec. 2.52. Overwithholding.** The term “overwithholding” means any amount ac-

tually withheld (determined before application of the adjustment procedures described in section 7.01 of this Agreement) from an item of income or other payment that is in excess of:

(A) The amount required to be withheld under chapter 4 with respect to such item of income or other payment, if applicable, and

(B) In the case of an amount subject to chapter 3 withholding, the actual tax liability of the beneficial owner of the income or payment to which the withheld amount is attributable, regardless of whether such overwithholding was in error or appeared correct at the time it occurred. For purposes of section 3406, the term “overwithholding” means the excess of the amount actually withheld under section 3406 over the amount required to be withheld.

**Sec. 2.53. Participating FFI.** A “participating FFI” is defined in § 1.1471-1(b)(91).

**Sec. 2.54. Passthrough Beneficiary or Owner.** A “passthrough beneficiary or owner” is a direct or indirect beneficiary or owner of WT that is a nonqualified intermediary, a qualified intermediary that does not assume primary chapters 3 and 4 withholding responsibility with respect to payments of U.S. source FDAP income or primary Form 1099 reporting and backup withholding responsibility, or a flow-through entity. As provided in section 2.27 of this Agreement, a withholding foreign partnership or withholding foreign trust is not a flow-through entity and thus is not a passthrough beneficiary or owner.

**Sec. 2.55. Payee.** For purposes of chapter 3, a “payee” is defined in § 1.1441-1(c)(12) and for purposes of chapter 4, a “payee” means a person described in § 1.1471-3(a).

**Sec. 2.56. Payment.** A “payment” means an amount considered made to a person if that person realizes income whether or not such income results from an actual transfer of cash or other property. See § 1.1441-2(e).

**Sec. 2.57. Payor.** A “payor” is defined in § 31.3406(a)-2 and § 1.6049-4(a)(2) and generally means any person required to make an information return under chapter 61.

**Sec. 2.58. Pooled Reporting (PR) Election.** A “pooled reporting election” or “PR

election” is an election to pool report chapter 3 reporting pools on Form 1042-S for chapter 3 purposes as described in section 6.02(D) of this Agreement.

**Sec. 2.59. Qualified Intermediary (QI).** A “qualified intermediary” or “QI” is a person (or branch) described in § 1.1441-1(e)(5)(ii) that has in effect an agreement with the IRS to be treated as a QI and acts as a QI. See Rev. Proc. 2017-15, 2017-03 I.R.B. 437 (as updated or superseded by any subsequent revenue procedure), for the QI Agreement.

**Sec. 2.60. Recalcitrant Account Holder.** A “recalcitrant account holder” means a person described in § 1.1471-5(g).

**Sec. 2.61. 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 and a nonreporting Model 2 FFI that is treated as a registered deemed-compliant FFI.

**Sec. 2.62. Registered Deemed-Compliant Model 1 IGA FFI.** “Registered deemed-compliant Model 1 IGA FFI” means an FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with respect to U.S. accounts as those applicable to a registered deemed-compliant FFI under § 1.1471-5(f)(1), including the requirement to register with the IRS.

**Sec. 2.63. Reportable Amount.** A “reportable amount” means U.S. source FDAP income that is an amount subject to chapter 3 withholding (as defined in section 2.04 of this Agreement), U.S. source deposit interest (as defined in section 871(i)(2)(A)), and U.S. source interest or original issue discount paid on the redemption of short-term obligations (as defined in section 871(g)(1)(B)(i)). The term does not include payments on deposits with banks and other financial institutions that remain on deposit for two weeks or less. It also does not include amounts of original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or amounts described in § 1.6049-5(b)(7), (10), or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

**Sec. 2.64. Reporting Model 1 FFI.** A “reporting Model 1 FFI” means an FFI

with respect to which a foreign government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than an FFI that is treated as a nonreporting Model 1 FFI (including a registered deemed-compliant Model 1 IGA FFI) or nonparticipating FFI under an applicable Model 1 IGA.

**Sec. 2.65. Reporting Pool.** A “reporting pool” is defined in section 6.02(A) of this Agreement.

**Sec. 2.66. Responsible Officer.** A “responsible officer” of a WT means the trustee of WT or an agent of the trustee of WT with sufficient authority to fulfill the duties of a responsible officer as described in section 8 of this Agreement, including the requirements to periodically certify and to respond to requests by the IRS for additional information to review WT’s compliance with this Agreement.

**Sec. 2.67. Retirement Fund.** A “retirement fund” means a retirement fund or other fund that is an exempt beneficial owner described in § 1.1471-6(f) or a similar fund that qualifies as an exempt beneficial owner under an applicable Model 1 IGA or Model 2 IGA.

**Sec. 2.68. Sponsored Direct Reporting NFFE.** The term “sponsored direct reporting NFFE” has the meaning set forth in § 1.1472-1(c)(5).

**Sec. 2.69. Sponsored FFI.** The term “sponsored FFI” means any entity described in § 1.1471-5(f)(1)(i)(F) (sponsored investment entities and sponsored controlled foreign corporations) or § 1.1471-5(f)(2)(iii) (sponsored, closely held investment vehicles).

**Sec. 2.70. Sponsoring Entity.** “Sponsoring entity” means (i) an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or more sponsored FFIs pursuant to § 1.1471-5(f)(1)(i)(F) or (f)(2)(iii); or (ii) an entity that registers with the IRS and agrees to perform the due diligence and reporting obligations of one or more direct reporting NFFEs pursuant to § 1.1472-1(c)(5).

**Sec. 2.71. Trust, Beneficiary, and Owner.** The term “trust” is defined in § 301.7701-4. The term “beneficiary” is defined in section 643(c) of the Code and the regulations thereunder. An “owner” is a grantor under § 1.671-2(e) or a person

treated as an owner under sections 671 to 679 and the regulations thereunder.

**Sec. 2.72. Underwithholding.** “Underwithholding” means the excess of the amount required to be withheld under chapter 3 or 4 over the amount actually withheld.

**Sec. 2.73. Undocumented Beneficiary or Owner.** An “undocumented beneficiary or owner” is a beneficiary or owner for whom WT does not have valid documentation.

**Sec. 2.74. U.S. Account.** A “U.S. account” is any financial account maintained by a participating FFI or registered deemed-compliant FFI that is held by one or more specified U.S. persons or U.S. owned foreign entities that such FFI reports or elects to report under the FFI agreement or § 1.1471-5(f), as applicable. A U.S. account includes, in the case of a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, a U.S. reportable account as defined in section 2.76 of this Agreement.

**Sec. 2.75. U.S. Person.** A “United States person” (or “U.S. person”) is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State of the United States (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof). An individual will not be treated as a U.S. person for purposes of this Agreement for a taxable year or any portion of a taxable year that the individual is a dual resident taxpayer (within the meaning of § 301.7701(b)-7(a)(1)) who is treated as a nonresident alien pursuant to § 301.7701(b)-7 for purposes of computing the individual’s U.S. tax liability. A U.S. person does not include an alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States. For chapter 4 purposes, the term “U.S. person” or “United States person” also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in § 1.1471-5(e)(1)(iv)), or the foreign insurance company is a specified insurance company and is licensed to do business in any State of the United States.

**Sec. 2.76. U.S. Reportable Account.** A

“U.S. reportable account” means a financial account maintained by a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI that such FFI reports or elects to report under the applicable domestic law for compliance with and implementation of FATCA.

**Sec. 2.77. U.S. Source FDAP.** “U.S. source FDAP” means amounts from sources within the United States that constitute fixed or determinable annual or periodical income, as defined in § 1.1441-2(b)(1).

**Sec. 2.78. U.S. TIN.** A “U.S. TIN” means a U.S. taxpayer identification number assigned under section 6109.

**Sec. 2.79. Withholdable Payment.** A “withholdable payment” means an amount described in § 1.1473-1(a).

**Sec. 2.80. Withholding Agent.** A “withholding agent” has the same meaning as set forth in § 1.1441-7(a) for purposes of chapter 3 and as set forth in § 1.1473-1(d) for purposes of chapter 4 and includes a payor (as defined in section 2.57 of this Agreement).

**Sec. 2.81. Withholding Foreign Partnership (WP).** A “withholding foreign partnership” or “WP” means a partnership, described in § 1.1441-5(c)(2), that has in effect a withholding agreement with the IRS to be treated as a withholding foreign partnership.

**Sec. 2.82. Withholding Foreign Trust (WT).** A “withholding foreign trust” or “WT” means a trust, described in § 1.1441-5(e)(5)(v), that has in effect a withholding agreement with the IRS to be treated as a withholding foreign trust.

**Sec. 2.83. WT-EIN.** A “WT-EIN” means the employer identification number assigned by the IRS to a WT. WT’s WT-EIN is only to be used when WT is acting as a WT. For example, WT must give a withholding agent its EIN (other than its WT-EIN), if any, if it is not acting as a WT (i.e., acting as a nonwithholding foreign trust) and a taxpayer identification number is required.

### **Section 3. WITHHOLDING RESPONSIBILITY**

#### **Sec. 3.01. Chapters 3 and 4 Withholding—In General.**

(A) *Chapter 4 Withholding.*

WT (unless WT is a retirement fund) is a withholding agent for purposes of chapter

4 and is subject to the withholding and reporting provisions applicable to withholding agents under sections 1471 and 1472 with respect to its beneficiaries or owners. WT is required to withhold 30 percent of any withholdable payment made after June 30, 2014, that is distributed to, or included in the distributive share of, a beneficiary or owner that is an FFI unless WT can reliably associate the payment (or portion of the payment) with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under § 1.1471-2(a)(4), or the payment is made under a grandfathered obligation described in § 1.1471-2(b). See § 1.1473-1(a) for the definition of a withholdable payment and the applicable exceptions to this definition. WT is also required to withhold 30 percent of any withholdable payment made after June 30, 2014, that is distributed to, or included in the distributive share of, a beneficiary or owner that is an NFFE unless WT can reliably associate the payment (or portion of the payment) with a certification described in § 1.1472-1(b)(1)(ii), or an exception to withholding under § 1.1472-1 applies.

If WT is a retirement fund, WT is not required to withhold under section 1471 or 1472. If WT is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), WT will satisfy its requirement to withhold under sections 1471(a) and 1472(a) with respect to direct beneficiaries or owners that are entities by withholding on withholdable payments made to nonparticipating FFIs and recalcitrant account holders to the extent required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI. See the FFI agreement, § 1.1471-5(f), or the applicable Model 2 IGA for the withholding requirements that apply to withholdable payments made to direct beneficiaries or owners that are individuals and are treated as recalcitrant account holders. If WT is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, WT will satisfy its requirement to withhold under section 1471(a) with respect to direct beneficiaries or owners by withholding on withholdable payments made to nonparticipating FFIs to the extent required under its FATCA requirements as a

registered deemed-compliant FFI or registered deemed-compliant Model 1 IGA FFI. WT must withhold at the time and in the manner described in sections 3.02 through 3.04 of this Agreement, which modifies other provisions describing the time and manner in which WT would otherwise be required to withhold for chapter 4 purposes.

*(B) Chapter 3 Withholding.*

WT is a withholding agent for purposes of chapter 3 and is subject to the withholding and reporting provisions applicable to withholding agents under chapter 3. WT must withhold 30 percent of any payment of an amount subject to chapter 3 withholding that is distributed to, or included in the distributive share of, a beneficiary or owner that is a foreign person unless WT can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. See section 4 of this Agreement regarding documentation requirements applicable to WT for determining whether chapter 3 withholding applies.

With respect to an amount subject to chapter 4 withholding that is also an amount subject to chapter 3 withholding, WT may credit any tax withheld under chapter 4 against its liability for any tax due under chapter 3 with respect to the payment so that no additional withholding is required on the payment for purposes of chapter 3. Nothing in chapter 4 or the regulations thereunder (including the FFI agreement) or any applicable IGA relieves WT of its requirements to withhold on an amount subject to chapter 3 withholding to the extent required under sections 3.02 through 3.04 of this Agreement or modifies the documentation upon which WT may rely under section 4 of this Agreement for determining whether withholding under chapter 3 applies.

**Sec. 3.02. Primary Chapters 3 and 4 Withholding Responsibility.** WT must assume primary chapters 3 and 4 withholding responsibility for all withholdable payments and amounts subject to chapter 3 withholding that are distributed to, or included in the distributive share of, any direct beneficiary or owner and any indirect beneficiary or owner for which it acts

as a WT to the extent permissible under section 9 of this Agreement. If WT acts as a nonwithholding foreign trust with respect to an indirect beneficiary or owner, it cannot assume primary chapters 3 and 4 withholding responsibility for payments made to that indirect beneficiary or owner. WT is not required to withhold on amounts it pays to a QI that assumes primary withholding responsibility with respect to the payment, or to a WP, or another WT.

If WT is a participating FFI or a registered deemed-compliant FFI, it may not elect with respect to its direct beneficiaries or owners to satisfy its obligation to withhold under chapter 4 (or the FFI agreement) on a withholdable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient by backup withholding under section 3406 as provided in § 1.1471-4(b)(3)(iii) and section 4 of the FFI agreement.

See section 6 of this Agreement regarding WT's responsibility to report amounts subject to withholding on Form 1042-S.

**Sec. 3.03. Timing of Withholding.** WT must withhold on the date it makes a distribution to a foreign beneficiary or owner that includes a withholdable payment or an amount subject to chapter 3 withholding as determined under section 3.04 of this Agreement. To the extent a beneficiary's or owner's distributive share of income subject to withholding has not actually been distributed to the beneficiary or owner, WT must withhold on the beneficiary's or owner's distributive share on the earlier of the date that the statement required under section 6048(b) is mailed or otherwise provided to the beneficiary or owner or the due date for furnishing the statement (whether or not WT is required to prepare and furnish the statement). If that date is after the due date (including extensions) for filing WT's Forms 1042-S for the calendar year to which the distributive share relates, WT must withhold and report the withholding on the distributive share that relates to the prior calendar year as if it arises in the subsequent calendar year. See section 6.01 of this Agreement for requirements to report the withheld tax.

**Sec. 3.04. Withholding on Distributions.** WT may determine the amount of withholding on a distribution based on a rea-

sonable estimate of the beneficiary's or owner's distributive share of income subject to withholding for the year. WT must correct the estimated withholding to reflect the beneficiary's or owner's actual distributive share on the earlier of the date that the statement required under section 6048(b) is mailed or otherwise provided to the beneficiary or owner or the due date for furnishing the statement (whether or not WT is required to prepare and furnish the statement). If that date is after the earlier of the due date (including extensions) for filing WT's Forms 1042-S or the date WT actually issues Forms 1042-S for the calendar year, WT must withhold and report any adjustments required by correcting the information for the following calendar year.

**Sec. 3.05. Deposit Requirements.** WT must deposit amounts withheld under chapters 3 and 4 at the time and in the manner provided under section 6302 (see § 1.6302-2(a) or § 31.6302-1(h)).

## **Section 4. DOCUMENTATION REQUIREMENTS**

### **Sec. 4.01. Documentation Requirements.**

*(A) General Documentation Requirements.* Except as otherwise provided in this section 4, WT must obtain a Form W-8 or Form W-9 from every direct beneficiary or owner that receives a distribution or distributive share of a reportable amount. If WT is an FFI and is subject to the know-your-customer rules for documenting its beneficiaries or owners (or subset of beneficiaries or owners), WT may obtain documentary evidence as set forth in the "know-your-customer" rules approved by the IRS (or the documentation described in section 4.03(A)(3) of this Agreement) for the applicable jurisdiction from its direct beneficiaries or owners rather than a Form W-8 or Form W-9, provided WT adheres to the know-your-customer rules that apply to WT with respect to the direct beneficiary or owner from whom the documentary evidence is obtained.

WT must review and maintain documentation in accordance with this section 4 and, in the case of documentary evidence obtained from direct beneficiaries or owners, in accordance with the know-your-customer rules approved by the IRS for

the applicable jurisdiction. WT must make documentation (together with any associated withholding statements and other documents or information) available upon request for inspection by WT's external reviewer, if the performance of an external review is requested by the IRS (as described in section 8.08(D) of this Agreement). WT represents that none of the laws to which it is subject prohibits disclosure of the identity of any beneficiary or owner or corresponding beneficiary or owner information to WT's reviewer.

*(B) Coordination of Chapter 3 and Chapter 4 Documentation Requirements.* If WT is an FFI (other than a retirement fund), WT is required to perform the due diligence procedures under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for each direct beneficiary or owner to determine if the beneficiary or owner is a holder of a U.S. account (or U.S. reportable account), and to determine each direct beneficiary or owner that is a nonparticipating FFI and, if applicable, that is a recalcitrant account holder (or non-consenting U.S. account). See, however, the automatic termination provision of section 10.03(A) of this Agreement if WT is not in possession of valid documentation for any direct beneficiary or owner at any time that withholding or reporting is required. For purposes of this section 4, with respect to documenting a beneficiary or owner for chapter 4 purposes, documentary evidence also includes documentation or information that is publicly available to determine the chapter 4 status of the account holder to the extent permitted under an applicable IGA.

If WT is an NFFE, WT is required to document the chapter 4 status of each beneficiary or owner to determine if reporting or withholding applies under section 1471 or 1472 on withholdable payments distributed to, or included in the distributive share of, the beneficiary or owner under the requirements of § 1.1471-3(d).

If WT has determined that withholding is not required under chapter 4, WT must obtain, unless already collected, documentation that meets the requirements of this section 4 to determine whether withholding applies under chapter 3. See also

WT's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for when WT will have reason to know that a claim of chapter 4 status is unreliable or incorrect and for WT's requirements following a change in circumstances. If WT is an NFFE, see § 1.1471-3(e)(4) for when WT will have reason to know that an entity's claim of chapter 4 status is unreliable or incorrect and § 1.1471-3(c)(6)(ii)(E) for WT's requirements following a change in circumstances.

**Sec. 4.02. Documentation for Foreign Beneficiaries or Owners.** WT may treat a beneficiary or owner as a foreign beneficial owner of an amount if the beneficiary or owner provides a valid Form W-8 (other than Form W-8IMY), or valid documentary evidence, to the extent permitted under section 4.01(A) of this Agreement, that supports the beneficiary's or owner's status as a foreign person. WT may treat a beneficiary or owner that has provided documentation as entitled to a reduced rate of withholding under chapter 3 if all the requirements for a reduced rate are met and the documentation provided by the beneficiary or owner supports entitlement to a reduced rate of withholding and no withholding under chapter 4. Sections 4.03 through 4.06 of this Agreement describe the specific documentation requirements necessary for obtaining a reduced rate of withholding in certain circumstances.

**Sec. 4.03. Treaty Claims.** WT may not reduce the rate of withholding under chapter 3 based on a beneficiary's or owner's claim of treaty benefits unless WT has determined that no chapter 4 withholding is required and it obtains from the beneficiary or owner the documentation required by section 4.03(A) of this Agreement. In addition, WT agrees to establish procedures to inform beneficiaries or owners of the terms of the limitation on benefits provisions of a treaty (if applicable and regardless of whether those provisions are contained in a separate article entitled Limitation on Benefits) under which the beneficiary or owner is claiming benefits. For beneficiaries or owners that are entities documented by WT on or after January 1, 2017, WT is required to obtain a Form W-8BEN-E with the ap-

propriate limitation on benefits certification or, if WT is allowed to and obtains documentary evidence, the written certification included in the treaty statement as described in section 4.03(B) of this Agreement. For beneficiaries or owners that are entities that were documented with documentary evidence prior to January 1, 2017, and for which treaty benefits are being claimed, WT is required to obtain the appropriate limitation on benefits statement prior to January 1, 2019.

*(A) Treaty Documentation.* The documentation required by this section 4.03(A) is as follows:

(1) A Form W-8BEN or Form W-8BEN-E on which a claim of treaty benefits is made, including, for an entity, the appropriate limitation on benefits and section 894 certifications, as provided in § 1.1441-6(b)(1) (if applicable), and a U.S. TIN or foreign TIN. A U.S. TIN or foreign TIN shall not be required, however, if the beneficiary or owner is a direct beneficiary or owner. If WT is acting as a withholding foreign trust for an indirect beneficiary or owner, the indirect beneficiary or owner is required to have either a U.S. TIN or a foreign TIN in order to claim treaty benefits unless it is claiming treaty benefits on income from marketable securities as described in § 1.1441-6(c);

(2) Documentary evidence, as permitted under section 4.01(A) of this Agreement, that has been obtained pursuant to the know-your-customer rules that apply to the direct beneficiary or owner, and the direct beneficiary or owner, if it is an entity, has made the treaty statement (if applicable) required by section 4.03(B) of this Agreement; or

(3) The type of documentary evidence, as permitted under section 4.01(A) of this Agreement, required under § 1.1441-6 to establish entitlement to a reduced rate of withholding under a treaty and the direct beneficiary or owner, if it is an entity, has made the treaty statement (if applicable) required by section 4.03(B) of this Agreement.

*(B) Treaty Statement.* The treaty statement required by an entity direct beneficiary or owner under this section 4.03(B) is as follows: [Name of Direct Beneficiary or Owner] meets all provisions of the treaty that are necessary to claim a reduced rate of withholding, including any applicable

limitation on benefits provisions, and derives the income within the meaning of section 894, and the regulations thereunder, as the beneficial owner.

WT is only required to obtain the treaty statement described in this section 4.03(B) from a beneficiary or owner that is an entity. WT shall not be required to obtain a treaty statement described in this section 4.03(B) from an individual who is a resident of an applicable treaty country or from the government, or its political subdivisions, of a treaty country. WT is required to collect and report (as required on Form 1042-S) the specific category of limitation on benefits provision from all of its entity beneficiaries or owners, including a government (or its political subdivisions). WT may rely on a beneficiary's or owner's claim of the specific category of limitation on benefits provision absent actual knowledge that the claim is unreliable or incorrect.

**Sec. 4.04. Documentation for International Organizations.** WT may not treat a beneficiary or owner as an international organization entitled to an exemption from withholding under section 892 unless WT has determined that no chapter 4 withholding is required and it obtains a Form W-8EXP (or documentary evidence as permitted under section 4.01(A) of this Agreement) from the international organization. The name provided on the documentation must be the name of an entity designated as an international organization by executive order pursuant to 22 United States Code 288 through 288f. If an international organization is not claiming benefits under section 892 but under another Code exception, the provisions of section 4.02 of this Agreement apply rather than the provisions of this section 4.04.

**Sec. 4.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.**

*(A) Documentation for a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption from Withholding Under Section 892 or Section 895.* WT may not treat a beneficiary or owner as a foreign government or foreign central bank of issue exempt from withholding under section 892 or 895 unless WT has determined that no chapter 4 withholding is required and—

*(1)* WT receives from the beneficiary or owner a Form W-8EXP (or documentary evidence as permitted under section 4.01(A) of this Agreement) establishing that the beneficiary or owner is a foreign government or foreign central bank of issue;

*(2)* The income distributed to, or included in the distributive share of, the beneficiary or owner is the type of income that qualifies for an exemption from withholding under section 892 or 895; and

*(3)* WT does not know, or have reason to know, that the beneficiary or owner is a controlled commercial entity as described in section 892, that the income owned by the foreign government or foreign central bank of issue is being received from a controlled commercial entity, or that the income is from the disposition of an interest in a controlled commercial entity.

*(B) Treaty Benefits.* WT may not treat a beneficiary or owner as a foreign government or foreign central bank of issue entitled to a reduced rate of withholding under an income tax treaty for purposes of chapter 3 unless WT has determined that no chapter 4 withholding is required and it has valid documentation that is sufficient to obtain a reduced rate of withholding under a treaty, as described in section 4.03 of this Agreement.

*(C) Other Code Exception.* If a foreign government or foreign central bank of issue is not claiming benefits under section 892 or 895 or a reduced rate under an income tax treaty but under another Code exception (*e.g.*, the portfolio interest exception under section 871(h) or 881(c)), the provisions of section 4.02 of this Agreement apply rather than the provisions of this section 4.05.

**Sec. 4.06. Documentation for Foreign Tax-Exempt Organizations.** To the extent that WT determines that an amount distributed to, or included in the distributive share of, a beneficiary or owner is not subject to withholding under chapter 4, WT may not treat the beneficiary or owner as a foreign tax-exempt organization and reduce the rate of withholding or exempt the beneficiary or owner from withholding for purposes of chapter 3 unless WT satisfies the requirements provided in section 4.06(A), (B), or (C) of this Agreement.

*(A) Reduced Rate of Withholding Under Section 501.* WT may not treat a benefi-

ciary or owner as a foreign organization described under section 501(c), and therefore exempt from withholding under chapter 3 (or, if the beneficiary or owner is a foreign private foundation, subject to withholding at a 4-percent rate under section 1443(b)) unless WT obtains a valid Form W-8EXP with Part IV of the form completed.

*(B) Treaty Exemption.* WT may not treat a beneficiary or owner as a foreign organization that is tax-exempt on an item of income pursuant to a treaty unless WT obtains valid documentation as described under section 4.03 of this Agreement that is sufficient for obtaining a reduced rate of withholding under the treaty and the documentation establishes that the beneficiary or owner is an organization exempt from tax under the treaty on that item of income.

*(C) Other Exceptions.* If a tax-exempt entity is not claiming a reduced rate of withholding because it is a foreign organization described under section 501(c) or under a treaty article that applies to exempt certain foreign organizations from tax, but is claiming a reduced rate of withholding under another Code or treaty exception, the provisions of section 4.02 or 4.03 of this Agreement (as applicable) shall apply rather than the provisions of this section 4.06.

**Sec. 4.07. Documentation from Passthrough Beneficiaries or Owners.** Except as otherwise provided in section 9 of this Agreement, WT shall not act as a withholding foreign trust with respect to an amount distributed to, or included in the distributive share of, a passthrough beneficiary or owner. WT must forward the passthrough beneficiary's or owner's documentation (and associated withholding statement and documentation of indirect beneficiaries or owners) to the withholding agent from whom WT receives a reportable amount.

**Sec. 4.08. Documentation for U.S. Exempt Recipients.** WT shall not treat a beneficiary or owner as a U.S. exempt recipient unless WT obtains from the beneficiary or owner—

*(A)* A valid Form W-9 on which the beneficiary or owner includes an exempt payee code to certify that the beneficiary or owner is a U.S. exempt recipient;

*(B)* Documentary evidence, as permitted

under section 4.01(A) of this Agreement, that is sufficient to establish that the beneficiary or owner is a U.S. exempt recipient; or

(C) Documentary evidence, as permitted under section 4.01(A) of this Agreement, that is sufficient to establish the beneficiary's or owner's status as a U.S. person and WT can treat the beneficiary or owner as an exempt recipient under the rules of §§ 1.6045-2(b)(2)(i) or 1.6049-4(c)(1)(ii), as appropriate, without obtaining documentation.

**Sec. 4.09. Documentation for U.S. Non-Exempt Recipients.** WT shall not treat a beneficiary or owner as a U.S. non-exempt recipient unless WT obtains a valid Form W-9 or other similar agreed form from the beneficiary or owner.

**Sec. 4.10. Documentation Validity.**

(A) *In General.* WT may not rely on documentation if WT has actual knowledge or reason to know that the information or certifications contained in the documentation provided by a beneficiary or owner is unreliable or incorrect, or that there is a change in circumstances with respect to the information or statements contained in the documentation or in WT's files (account information) pertaining to the obligation that affects the reliability of the beneficiary or owner's claim. See § 1.1441-1(e)(4)(ii)(D) for the definition of change in circumstances. Once WT knows, or has reason to know, that documentation provided by a beneficiary or owner is unreliable or incorrect to establish foreign status or residency for purposes of claiming benefits under an applicable income tax treaty, it can no longer reliably associate a payment with valid documentation unless it obtains additional documentation to establish the beneficiary's or owner's chapter 3 status. If WT can no longer reliably associate a payment with valid documentation, it must obtain new documentation prior to the time withholding is required under section 3 of this Agreement. With respect to a withholding agent's reason to know that a claim for treaty benefits is unreliable or incorrect based on the existence of a tax treaty, the rules in § 1.1441-6(b)(1)(ii) will apply to preexisting beneficiaries or owners for which WT held valid documentation upon a change in circumstances or, with respect to a preexisting entity beneficiary or

owner, when it provides a written limitation on benefits statement (as described in section 4.03(B) of this Agreement). For all beneficiaries or owners that become beneficiaries or owners of WT on or after January 1, 2017, this rule will apply on the date that such beneficiary or owner becomes a beneficiary or owner of WT. For purposes of this section 4.10(A), a "preexisting beneficiary or owner" or "preexisting entity beneficiary or owner" is a beneficiary or owner documented by WT prior to January 1, 2017, for a WT with a WT Agreement in effect prior to that date. For a WT that did not have a WT Agreement in effect prior to January 1, 2017, a "preexisting beneficiary or owner" or "preexisting entity beneficiary or owner" means a beneficiary or owner that became a beneficiary or owner of WT (and for which WT has valid documentation) prior to the effective date of its WT Agreement.

(B) *General Rules.*

(1) WT shall not rely on a Form W-9 if it is not permitted to do so under the rules of § 31.3406(h)-3(e) or if it has been informed by the IRS or another withholding agent that the form is unreliable or incorrect and shall not rely on a Form W-8 if it is not permitted to do so under this section 4.10.

(2) WT shall not treat documentary evidence provided by a beneficiary or owner as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by a beneficiary or owner that is a natural person and the photograph on the documentary evidence, if any, does not match the appearance of the person presenting the document.

(3) WT may not rely on documentation to reduce the withholding rate that would otherwise apply if—

(a) The beneficiary's or owner's documentation is incomplete or contains information that is inconsistent with the beneficiary's or owner's claim,

(b) WT has other information in the account information that is inconsistent with the beneficiary's or owner's claim, or

(c) The documentation lacks the information necessary to establish entitlement to a reduced rate of withholding.

For example, if a direct beneficiary or

owner that is an entity provides documentation to claim treaty benefits and the documentation establishes the direct beneficiary's or owner's status as a foreign person and a resident of a treaty country but fails to provide the treaty statement in section 4.03(B) of this Agreement, the documentation does not establish the direct beneficiary's or owner's entitlement to a reduced rate of withholding.

**Sec. 4.11. Documentation Validity Period.**

(A) *Documentation Other Than a Form W-9.* WT, as permitted under section 4.01(A) of this Agreement, may rely on valid documentary evidence obtained from direct beneficiaries or owners in accordance with applicable know-your-customer rules as long as the documentary evidence remains valid under those rules or until WT knows, or has reason to know, that the information contained in the documentary evidence is unreliable or incorrect. However, WT may only rely on statements regarding entitlement to treaty benefits described in § 1.1441-6(c)(5)(i) or the representations described in section 4.03 of this Agreement until the validity expires under § 1.1441-1(e)(4)(ii)(A)(2). For establishing a beneficiary's or owner's chapter 3 status (as defined in § 1.1441-1(c)(45)) or foreign status for chapter 61 purposes, WT may rely on a valid Form W-8 until its validity expires under § 1.1441-1(e)(4)(ii) and may rely on documentary evidence (other than documentary evidence obtained pursuant to applicable know-your-customer rules) until its validity expires under § 1.6049-5(c).

(B) *Form W-9.* WT may rely on a Form W-9 unless one of the conditions of § 31.3406(h)-3(e)(2)(i) through (v) applies or if it has been informed by the IRS or another withholding agent that the form is unreliable or incorrect.

**Sec. 4.12. Maintenance and Retention of Documentation.**

(A) *Maintaining Documentation.* WT shall maintain documentation by retaining the original documentation, a certified copy, a photocopy, a scanned copy, a microfiche, or other means that allow reproduction (provided that WT has recorded receipt of the documentation and is able to produce a hard copy). If WT is not required to retain copies of documentary

evidence under its know-your-customer rules, WT may instead retain a notation of the type of documentation reviewed, the date the documentation was reviewed, the document's identification number, if any (e.g., a passport number), and whether such documentation contained any U.S. indicia. For obligations held by a direct beneficiary or owner opened prior to January 1, 2001, if WT was not required under its know-your-customer rules to maintain originals or copies of documentation, WT may nevertheless rely on the information if it has complied with all other aspects of its know-your-customer rules regarding establishment of a beneficiary's or owner's identity, it has a record that the documentation required under the know-your-customer rules was actually examined by an employee of WT or employees of the trustee of WT in accordance with the know-your-customer rules, and it has no information in its possession that would require WT to treat the documentation as invalid.

*(B) Retention Period.* WT shall retain a beneficiary's or owner's documentation obtained under this section 4 for as long as the document is relevant for the determination of WT's tax liability or reporting responsibilities under chapters 3, 4, and 61, and sections 3406 and 6048.

## **Section 5. WITHHOLDING FOREIGN TRUST WITHHOLDING CERTIFICATE**

**Sec. 5.01. WT Withholding Certificate.** WT agrees to furnish a withholding foreign trust withholding certificate to each withholding agent from which it receives a reportable amount as a withholding foreign trust. The withholding foreign trust withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that WT is acting as a withholding foreign trust, contains WT's WT-EIN, and provides all other information and certifications required by the form, including its WT-EIN. If WT is receiving a reportable amount that is a withholdable payment, the withholding certificate must also contain WT's chapter 4 status to the extent required, provide its GIIN (if applicable), and provide the other information and certifications required on the form. If WT is an FFI, WT must provide a GIIN on its withholding foreign trust withhold-

ing certificate irrespective of the time the FFI is permitted under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to obtain a GIIN. WT is not required to disclose, as part of that Form W-8IMY or its withholding statement, any information regarding the identity of its direct beneficiaries or owners and those indirect beneficiaries or owners for which it acts as a withholding foreign trust to the extent permitted under section 9 of this Agreement. If WT does not act as a withholding foreign trust for an indirect beneficiary or owner, WT is required to furnish a nonwithholding foreign trust certificate to its withholding agent. See § 1.1441-5(e)(5)(iii) for the requirements of a nonwithholding foreign trust withholding certificate, the withholding statement associated with the withholding certificate, and the other documentation or other information for each passthrough beneficiary or owner and its direct and indirect beneficiaries or owners.

**Sec. 5.02. Withholding Statement.** When WT is acting as a withholding foreign trust, WT must assume primary chapters 3 and 4 withholding responsibility as required by section 3.02 of this Agreement for reportable amounts that are distributed to, or included in the distributive shares of, its direct beneficiaries or owners and any indirect beneficiaries or owners for which it is acting as a withholding foreign trust. Accordingly, WT is not required to provide a withholding statement in such circumstances. See section 9 of this Agreement, providing that WT may not act as a withholding foreign trust for certain indirect beneficiaries or owners that are U.S. non-exempt recipients.

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

**Sec. 6.01. Form 1042 Filing Requirement.**

*(A) In General.* WT shall file a return on Form 1042, whether or not WT withheld any amounts under chapter 3 or 4 of the Code, on or before March 15 of the year following any calendar year in which WT acts as a withholding foreign trust. In addition to the information required on Form 1042 and its accompanying instructions, WT shall attach a statement setting forth

the amounts of any overwithholding or underwithholding adjustments made under sections 7.01 and 7.03 of this Agreement, and an explanation of the circumstances that resulted in the over- or underwithholding. If WT is requesting a collective refund or credit, WT shall attach the statements required by section 7.02 of this Agreement and shall comply with the procedures specified in section 7.02 of this Agreement.

*(B) Extensions for Filing Returns.* WT may request an extension of the time for filing Form 1042, or any of the information required to be attached to the form, by submitting Form 7004, Application for Automatic Extension of Time to File Certain Business Income, Tax, Information, and Other Returns, on or before the due date of the return.

### **Sec. 6.02. Form 1042-S Reporting.**

*(A) In General.* WT must file Form 1042-S for each beneficiary or owner for whom it acts as a withholding foreign trust and for whom WT distributes, or in whose distributive share is included, a reportable amount unless WT is permitted under sections 6.02(C) and (D) of this Agreement to report in pools (reporting pools). With respect to its direct beneficiaries or owners, WT must file Forms 1042-S in the manner required by the regulations under chapters 3 and 4 for amounts distributed to, or included in the distributive share of, its beneficiaries or owners (or in the case of a participating FFI, pursuant to its FATCA requirements as a participating FFI) and the instructions to the form, including any requirement to file the forms magnetically or electronically. Any Form 1042-S required to be filed by this section 6 shall be filed on or before March 15 following the calendar year in which withholding, if any, was required under section 3.02 of this Agreement. WT may request an extension of time to file Forms 1042-S by submitting Form 8809, Application for Extension of Time to File Information Returns (or other superseding form) by the due date of Forms 1042-S in the manner required by (and to the extent permitted on) Form 8809.

*(B) Recipient Specific Reporting.* WT is required to file a separate Form 1042-S for amounts distributed to, or included in the distributive share of, each separate

beneficiary or owner as described in this section 6.02(B). WT must file separate Forms 1042-S by income code, chapter 3 or 4 exemption code, recipient code, chapter 4 withholding rate pool (if applicable), and withholding rate.

(1) Unless WT has made the pooled reporting election pursuant to section 6.02(D) of this Agreement, WT must file a separate Form 1042-S for each direct beneficiary or owner (other than a passthrough beneficiary or owner) to whom WT distributes, or whose distributive share includes, an amount subject to chapter 3 withholding that is either not a withholdable payment or is a withholdable payment for which no chapter 4 withholding is required.

(2) WT must file a separate Form 1042-S for each beneficiary or owner that is a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust to whom WT distributes, or whose distributive share includes, an amount subject to withholding under chapters 3 or 4, regardless of whether such beneficiary or owner is a direct or indirect beneficiary or owner of WT.

(3) WT must file a separate Form 1042-S for each passthrough beneficiary or owner that is a nonqualified intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and to whom WT distributes, or whose distributive share includes, an amount subject to chapter 4 withholding allocable to such FFI's chapter 4 withholding rate pools of recalcitrant account holders, nonparticipating FFIs, and reportable amounts allocable to U.S. payees, if applicable, regardless of whether such FFI is a direct or indirect beneficiary or owner of WT when WT applies section 9.03 of this Agreement.

(4) WT must file a separate Form 1042-S for each passthrough beneficiary or owner that is a nonqualified intermediary or flow-through entity that is not described in section 6.02(B)(3) of this Agreement (other than a nonparticipating FFI), and to whom WT distributes, or whose distributive share includes, an amount subject to chapter 4 withholding allocable to such passthrough beneficiary's or owner's chapter 4 withholding rate pool of payees that are nonparticipating FFIs, regardless

of whether such passthrough beneficiary or owner is a direct or indirect beneficiary or owner of WT when WT applies section 9.03 of this Agreement.

(5) WT must file a separate Form 1042-S for each beneficiary or owner of WT that is a partnership or trust to which WT applies the agency option under section 9.02 of this Agreement and to whom WT distributes, or whose distributive share includes, an amount subject to chapter 4 withholding that is allocable to the partnership or trust's chapter 4 withholding rate pool of payees that are nonparticipating FFIs or to whom WT distributes, or whose distributive share includes, an amount subject to chapter 3 withholding that is either not a withholdable payment or is a withholdable payment for which no chapter 4 withholding is required and that is allocable to such partnership's or trust's chapter 3 withholding rate pools.

(6) WT must file a separate Form 1042-S for each foreign account holder (or interest holder) of a passthrough beneficiary or owner that is a nonparticipating FFI that receives a payment on behalf of an exempt beneficial owner (regardless of whether the passthrough beneficiary or owner is a direct or indirect beneficiary or owner of WT) to the extent WT can reliably associate such amounts with valid documentation from such passthrough beneficiary or owner as to the portion of the payment allocable to one or more exempt beneficial owners. In addition, WT must file separate Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a passthrough beneficiary or owner that is described in the preceding sentence and that is a direct or indirect partner, beneficiary, or owner of a partnership or trust to which WT applies the agency option.

(7) WT must file a separate Form 1042-S for each foreign account holder (or interest holder) of a passthrough beneficiary or owner to whom WT distributes, or whose distributive share includes, an amount subject to chapter 3 withholding that is either not a withholdable payment or is a withholdable payment for which no chapter 4 withholding is required to the extent WT can reliably associate such amounts with valid documentation from an account holder (or interest holder) that is not itself a nonqualified intermediary or flow-

through entity when WT applies section 9.03 of this Agreement. In addition, WT must file a separate Form 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity (to which WT does not apply the agency option) that is described in the preceding sentence and that is a direct or indirect account holder (or interest holder) of a partnership or trust to which WT applies the agency option.

(8) If WT is an NFFE, WT must file a separate Form 1042-S for each direct beneficiary or owner that establishes its status as a passive NFFE but fails to provide the information regarding its owners as required under § 1.1471-3(d)(12)(iii).

*(C) Chapter 4 Reporting Pools of WT.*

If WT is an FFI, WT shall report on Form 1042-S amounts subject to chapter 4 withholding that it distributes to, or includes in the distributive share of, its direct beneficiaries or owners consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. A separate Form 1042-S shall be filed for each type of chapter 4 reporting pool. A chapter 4 reporting pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S that is allocable to a chapter 4 withholding rate pool consisting of payees that are nonparticipating FFIs or recalcitrant account holders. WT must report recalcitrant account holders in pools based upon their particular class described in § 1.1471-4(d)(6), with a separate Form 1042-S issued for each such pool. See section 9 of this Agreement for when a WT may include certain indirect beneficiaries or owners in its chapter 4 reporting pools.

If WT is a participating FFI or registered deemed-compliant FFI (including for this purpose a reporting Model 1 IGA FFI), WT may report in a chapter 4 withholding rate pool of U.S. payees reportable amounts that are distributed to, or included in the distributive share of, a direct beneficiary or owner that is a U.S. person, provided that WT reports such beneficiary or owner as a U.S. account (or U.S. reportable account) under its applicable FATCA requirements as a participating FFI, regis-

tered deemed-compliant FFI, reporting Model 1 FFI, or registered deemed-compliant Model 1 IGA FFI. WT shall include in its U.S. payee pool reportable amounts that are distributed to, or included in the distributive share of, a direct beneficiary or owner that is a U.S. person when WT either reports such beneficiary or owner as a U.S. account (or U.S. reportable account) pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI; or reports such beneficiary or owner as a recalcitrant account holder (or non-consenting U.S. account) provided that WT is not required to withhold on such beneficiary or owner pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. See, however, the automatic termination provision of section 10.03(A) of this Agreement if WT is not in possession of valid documentation for any direct beneficiary or owner at any time that withholding or reporting is required.

If WT is an NFFE, WT shall report amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are distributed to, or included in the distributive share of, direct beneficiaries or owners of WT that are nonparticipating FFIs in a chapter 4 reporting pool of nonparticipating FFIs.

*(D) Chapter 3 Reporting Pools of WT.*

WT may elect to perform pool reporting (PR election) for an amount subject to chapter 3 withholding that either is not a withholdable payment or is a withholdable payment for which no chapter 4 withholding is required and that WT distributes to, or includes in the distributive share of, a foreign direct beneficiary or owner (other than a passthrough beneficiary or owner, withholding foreign partnership, or withholding foreign trust). A separate Form 1042-S shall be filed for each chapter 3 reporting pool. A chapter 3 reporting pool is a payment of a single type of income that falls within a particular withholding rate, chapter 3 exemption code and, if the payment is a withholdable payment, a chapter 4 exemption code as determined on Form 1042-S and its accompanying instructions. WT may use a single chapter 3 pool reporting code (e.g.,

WT-withholding rate pool-general) for all reporting pools except for amounts paid to foreign tax-exempt recipients, for which a separate chapter 3 pool reporting code (e.g., WT-withholding rate pool-exempt organization) must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to chapter 3 withholding and is not liable to tax in its jurisdiction of residence because it is a charitable organization, a pension fund, or a foreign government. See section 9 of this Agreement for when a WT may include certain indirect beneficiaries or owners in its chapter 3 reporting pools.

If WT has made the PR election pursuant to this section 6.02(D), WT is not required to file Forms 1042-S for amounts distributed to, or included in the distributive share of, each separate direct beneficiary or owner for whom such reporting would otherwise be required. Instead, WT shall file a separate Form 1042-S for each reporting pool. However, see section 7.02 of this Agreement for the requirement for WT to provide a Form 1042-S to a beneficiary or owner if requested. Once made, the PR election is effective for the entire term of this Agreement beginning on the effective date of the Agreement and ending on the date of its expiration or termination under section 10 of the Agreement. WT must make a new election for each renewal term of this Agreement. If WT makes the PR election, WT cannot revoke it prior to the end of the term for which WT has made the PR election unless WT obtains consent from the IRS to revoke such election. WT may request IRS consent by contacting the IRS at the address specified in section 11.06 of this Agreement. If WT did not make the PR election at the time this Agreement was executed, then WT may make a PR election only by contacting the IRS at the address specified in section 11.06 of this Agreement.

**Sec. 6.03. Form 3520-A Filing Requirement.**

If WT is required to file Form 3520-A and an Owner Statement or Beneficiary Statement under section 6048 of the Code, then WT shall file Form 3520-A and file and furnish any required Owner Statements or Beneficiary Statements to U.S. beneficiaries or owners in accordance with the instructions for the form. See

section 6.05(D) for a special reporting obligation of WT with respect to beneficiaries not required to be reported by WT on Form 3520-A.

**Sec. 6.04. Retention of Returns.** WT shall retain Forms 1042 for the period of the applicable statute of limitations on assessments and collection under the Code.

**Sec. 6.05. FATCA U.S. Account Reporting.**

*(A) WT that is an FFI.* If WT is an FFI, WT is required to report each U.S. account (or, in the case of an FFI that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, each U.S. reportable account) that it maintains consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. If WT is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), WT must report its U.S. accounts on Form 8966 in the time and manner specified under its FATCA requirements as a participating FFI or registered deemed-compliant FFI, except to the extent WT is reporting under § 1.1471-4(d)(5) on Form 1099 with respect to its U.S. accounts. If WT is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, WT must report each U.S. reportable account on Form 8966 as required under the applicable Model 1 IGA.

*(B) WT that is an NFFE.* If WT is an NFFE, WT shall file Forms 8966 to report withholdable payments distributed to, or included in the distributive share of, any beneficiary or owner that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners if the NFFE is the beneficial owner of the withholdable payment received by WT. See § 1.1471-1(b)(8) for the definition of beneficial owner. WT must report on Form 8966 in accordance with the form and its accompanying instructions.

The Form 8966 must include the name of the NFFE that is owned by a substantial U.S. owner; the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments distributed to, or included in the distributive share of, the NFFE during the calendar year; and any other information as required by the form and its accompanying

instructions. If WT is acting as a sponsoring entity on behalf of a NFFE for chapter 4 purposes, WT is not required to report as described in this paragraph if WT reports the NFFE as part of WT's requirements as a sponsoring entity. See § 1.1472-1(c)(5)(ii) for the reporting requirements of a sponsoring entity.

*(C) Form 8966 Reporting for Payees that are NFFEs.* WT shall file Form 8966 to report withholdable payments that WT distributes to, or includes in the distributive share of, a passthrough beneficiary or owner that provides information regarding an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA) and that is the beneficial owner of the withholdable payment received by WT when such substantial U.S. owner or controlling person is not reported under section 6.05(A) of this Agreement. WT must report on Form 8966 in the time and manner provided in § 1.1474-1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner (or controlling person that is a specified U.S. person); the name, address, and U.S. TIN of each substantial U.S. owner (or controlling person that is a specified U.S. person); the total of all withholdable payments made to the NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions.

WT is not required to report on Form 8966, however, on a withholdable payment made to a passthrough beneficiary or owner that is a participating FFI or registered deemed-compliant FFI that is allocated to a payee that is a passive NFFE with one or more substantial U.S. owners on an FFI withholding statement when the participating FFI or registered deemed-compliant FFI includes on the statement the certification described in § 1.1471-3(c)(3)(iii)(B)(2)(iv) (certifying that the FFI is reporting the passive NFFE as a U.S. account or U.S. reportable account in accordance with the terms of the FFI agreement or an applicable IGA), provided WT does not know or have reason

to know that the certification is incorrect or unreliable. See § 1.1474-1(i)(2).

*(D) Special Reporting Obligation.* If WT is not a participating FFI, a registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI, and WT is not required to report with respect to a U.S. beneficiary of WT on Form 3520-A, then WT must report with respect to such beneficiary on Form 8966 as required under this section 6.05(D). A beneficiary for this purpose means a beneficiary that receives a distribution from WT during the year or that is required to include an amount in gross income under sections 652(a) or 662(a) with respect to WT.

## **Section 7. ADJUSTMENTS FOR OVER- AND UNDERWITHHOLDING; REFUNDS**

**Sec. 7.01. Adjustments for Chapter 3 or 4 Overwithholding by WT.** WT may make an adjustment for amounts paid to its beneficiaries or owners when WT has overwithheld under chapter 3 or 4 by applying either the reimbursement procedure described in section 7.01(A) of this Agreement or the set-off procedure described in section 7.01(B) of this Agreement within the time period prescribed for those procedures.

*(A) Reimbursement Procedure.* WT may repay its beneficiaries or owners for an amount overwithheld under chapter 3 or 4 and reimburse itself by reducing, by the amount of tax actually repaid to the beneficiaries or owners, the amount of any subsequent deposit of tax required to be made by WT under section 3.05 of this Agreement. For purposes of this section 7.01(A), an amount that is overwithheld shall be applied in order of time (i.e., sequentially) to each of WT's subsequent deposit periods in the same calendar year to the extent that the withholding taxes required to be deposited for a subsequent deposit period exceed the amount actually deposited. An amount overwithheld in a calendar year may be applied to deposit periods in the calendar year following the calendar year of overwithholding only if—

*(1)* The repayment occurs before the earlier of the due date (without regard to extensions) for filing Form 1042-S for the calendar year of overwithholding or the

date that the Form 1042-S is actually filed by WT with the IRS;

*(2)* WT states on a Form 1042-S (issued, if applicable, to the beneficiary or owner or otherwise to a chapter 3 or 4 reporting pool) filed by March 15 of the calendar year following the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayments; and

*(3)* WT states on a Form 1042, filed by March 15 of the calendar year following the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414-1.

*(B) Set-Off Procedure.* WT may repay its beneficiaries or owners by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 or 4 to be withheld from a payment made by WT before the earlier of March 15 of the calendar year following the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on Form 1042 or Form 1042-S for the calendar year of overwithholding, and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 or 4.

**Sec. 7.02. Collective Credit or Refund Procedures for Chapter 3 or 4 Overwithholding.** If WT has made a PR election and there has been overwithholding (as defined in section 2.52 of this Agreement) on amounts paid to WT's direct beneficiaries or owners during a calendar year and the amount of overwithholding has not been recovered under the reimbursement or set-off procedures as described in section 7.01 of this Agreement, WT may request a credit or refund of the total amount overwithheld by following the procedures of this section 7.02. WT shall follow the procedures set forth under sections 6402 and 6414, and the regulations thereunder, to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511. If there has been overwithholding and WT does not apply for a collective refund, it must provide a Form 1042-S for the payment that was subject to the over-

withholding if requested by the beneficiary or owner receiving the payment.

*(A) Payments for which a Collective Refund is Permitted.* Except as otherwise provided in this section 7.02, WT may use the collective refund procedure of this section 7.02 with respect to all amounts subject to chapter 3 or 4 withholding that WT has withheld under this Agreement. With respect to amounts withheld under chapter 3 or 4, WT shall not include in its collective refund claim any amounts withheld on payments made to an indirect beneficiary or owner or a direct account holder of WT that is a passthrough beneficiary or owner. Further, with respect to amounts withheld under chapter 4, if WT is a participating FFI or registered deemed-compliant FFI, WT shall not include in its collective refund claim any amounts withheld on payments made to any beneficiary or owner that is an account holder described in the FFI agreement or in § 1.1471-4(h)(2).

*(B) Requirements for a Collective Refund.*

*(1)* WT may use the collective refund procedures under this section 7.02 only if WT has not issued (and will not issue) Forms 1042-S to the beneficiaries or owners that were subject to overwithholding and for which a collective refund claim is being made.

*(2)* WT must submit, together with its amended Form 1042 on which it provides a reconciliation of amounts withheld and a claim for credit or refund, a statement that includes the following information and representations—

*(i)* The reason(s) for the overwithholding;

*(ii)* WT deposited the tax for which a refund is being sought under section 6302 and WT has not applied the reimbursement or set-off procedures of §§ 1.1461-2 and 1.1474-2 to adjust the tax withheld to which the claim relates;

*(iii)* WT has repaid or will repay the amount for which a refund is sought to the appropriate beneficiaries or owners;

*(iv)* WT retains a record showing the total amount of tax withheld, adjustments for underwithholding, and reimbursements for overwithholding as it relates to each beneficiary or owner and also showing the repayment (if applicable) to such beneficiaries or owners for the amount of tax for which a refund is being sought;

*(v)* WT retains valid documentation that

meets the requirements of chapter 3 or 4 (as applicable) to substantiate the amount of overwithholding with respect to each beneficiary or owner for which a refund is being sought; and

*(vi)* WT has not issued (and will not issue) a Form 1042-S (or such other form as the IRS may prescribe) to any beneficiary or owner with respect to the payments for which a refund is being sought.

**Sec. 7.03. Adjustments for Chapter 3 or 4 Underwithholding.** If WT knows that an amount should have been withheld under chapter 3 or 4 from a previous payment made to a beneficiary or owner and the amount was not withheld, WT may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same beneficiary or owner or satisfy the tax from the beneficiary's or owner's proportionate share of assets over which WT has control. The additional withholding or satisfaction of the tax owed described in the previous sentence must be made before the due date (not including extensions) of the Form 1042 for the calendar year in which the underwithholding occurred.

**Sec. 7.04. Chapter 3 or 4 Underwithholding after Form 1042 Filed.** If, after a Form 1042 has been filed for a calendar year, WT, WT's reviewer, or the IRS determines that WT has underwithheld tax under chapter 3 or 4 for such year, WT shall file an amended Form 1042 to report and pay the underwithheld tax. WT shall pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties, at the time of filing the amended Form 1042. If WT fails to file an amended return, the IRS shall make such return under section 6020 and assess such tax under the procedures set forth in the Code.

## **Section 8. COMPLIANCE PROCEDURES**

### **Sec. 8.01. In General.**

*(A) In General.* WT must adopt a compliance program under the authority of a responsible officer. WT's compliance program must include policies, procedures, and processes sufficient for WT to satisfy the documentation, reporting, and withholding requirements of this Agreement and sufficient for the responsible officer of WT to make the certifications required

under section 8.03 of this Agreement. See section 2.66 of this Agreement for the definition of responsible officer. WT must also perform or arrange for the performance of the periodic review described in section 8.04 of this Agreement to the extent required by that section. As part of the responsible officer's certification, WT must provide to the IRS the factual information as required by and referenced in sections 8.04 and 8.05 of this Agreement and in the Appendix to this Agreement. WT must also satisfy the requirements of section 8.06 of this Agreement with respect to the report of the periodic review and must comply with the IRS review referenced in section 8.07 of this Agreement.

*(B) Coordination with FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI.* As a condition for maintaining this Agreement, WT must maintain its chapter 4 status. Therefore, WT must, as part of the compliance procedures described in this section 8, determine whether it is compliant with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

### **Sec. 8.02. Compliance Program.**

*(A) Responsible Officer.* WT must appoint an individual as the responsible officer (as defined in section 2.66 of this Agreement). The responsible officer must be identified on the QI/WP/WT Application and Accounts Management System as the WT's responsible officer, and such person may, but is not required to, be the same responsible officer as for purposes of compliance with WT's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. The responsible officer must establish a compliance program that meets the requirements of this section 8.02 and must make the periodic certifications to the IRS described in section 8.03 of this Agreement. The responsible officer of WT must be the trustee of WT or an agent of the trustee of WT with sufficient authority to fulfill the duties of a responsible officer described in this section 8.02. The responsible officer (or a delegate appointed by the responsible officer) must also serve as the point of

contact for the IRS for all issues related to this Agreement and for complying with IRS requests for information or additional review procedures under section 8.07 of this Agreement. References in this section 8.02 to the responsible officer include a responsible officer's designee, where appropriate.

*(B) Compliance Program.* The responsible officer must establish a program for WT to comply with the requirements of this Agreement that includes the following:

*(1) Written Policies and Procedures.* The responsible officer must ensure the drafting and updating, as necessary, of written policies and procedures sufficient for WT to satisfy the documentation, withholding, reporting, and other obligations of this Agreement. Such written policies and procedures must include a process for an employee of the trustee or an agent of the trustee of WT to raise issues to the responsible officer that concern WT's compliance with this Agreement.

*(2) Training.* The responsible officer must communicate such policies and procedures to persons responsible for obtaining, reviewing, and retaining a record of documentation under the requirements of section 4 of this Agreement, making distributions and allocations to beneficiaries or owners on behalf of WT that are subject to withholding under section 3 of this Agreement, or reporting distributions or allocations to beneficiaries or owners under section 6 of this Agreement.

*(3) Systems.* The responsible officer must ensure that systems and processes are in place that will allow WT to fulfill its obligations under this Agreement. For example, in order to fulfill WT's obligations to report on Forms 1042-S, 3520-A and 8966 under section 6 of this Agreement, WT must establish systems for documenting beneficiaries or owners and for recording the information with respect to each such beneficiary or owner that WT is required to report under that section.

*(4) Monitoring of Business Changes.* The responsible officer must monitor business practices and arrangements that affect WT's compliance with this Agreement, including, for example, changes in WT's beneficiaries or owners that give rise to documentation, withholding, or reporting obligations under this Agreement.

*(5) Periodic Review.* Unless WT receives a waiver (the requirements of which are described in section 8.07 of this Agreement), the responsible officer must designate a reviewer that meets the qualifications described in section 8.04(A) of this Agreement to perform the periodic review described in section 8.05 of this Agreement, to the extent required.

*(6) Certification of Internal Controls.* The responsible officer must make the certification of internal controls as described in section 8.03 of this Agreement, including ensuring that corrective actions are taken in response to any material failures.

**Sec. 8.03. Certification of Internal Controls by Responsible Officer.** WT's responsible officer must make the applicable certification of compliance described in either Part II.A (Certification of Effective Internal Controls) or Part II.B (Qualified Certification) of the Appendix to this Agreement and must disclose any material failures that occurred during the certification period or during any prior period if the material failure was not disclosed as part of a prior certification or written disclosure made by WT to the IRS. If the responsible officer has identified an event of default or a material failure that has not been corrected as of the date of the certification, the responsible officer cannot make the certification in Part II.A (Certification of Effective Internal Controls) and must make the certification in Part II.B (Qualified Certification) of the Appendix to this Agreement. All WTs must also complete Parts II.C through II.F of the Appendix to this Agreement.

The certification of internal controls required by this section 8.03 applies only to the internal controls related to WT's compliance with this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and does not relate to any other obligations or requirements. In making the certification required by this section 8.03, the responsible officer may rely on, in addition to the results of the periodic review, any reasonable procedures, processes, reviews, or certifications made by other persons that the responsible officer has determined are necessary in order to make the certification described in this section 8.03. If the responsible officer re-

lies on an internal or external review for this purpose (i.e., for purposes of determining whether WT has effective internal controls), the internal or external reviewer must be independent, as described in section 8.04 of this Agreement. The responsible officer must document the procedures, processes, reviews, or certifications relied upon in making the certification. WT's responsible officer must make the certifications of compliance in such manner as the IRS may prescribe.

*(A) Partnerships or Trusts to which WT Applies the Agency Option.* Any partnership or trust to which WT applies the agency option must provide its documentation and other information to WT for inclusion in WT's periodic review or conduct an independent periodic review and provide a written certification to WT regarding its compliance with the requirements of the agency agreement. Such certification must be available to the IRS upon a request made as part of the review described in section 8.07 of this Agreement (with a certified translation into English if the certification is not in English).

*(B) Material Failures.*

*(1) Material Failures Defined.* A material failure is generally a failure of WT to fulfill the requirements of this Agreement or its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. For purposes of the certifications described in Parts II.A and II.B of the Appendix to this Agreement, a material failure is limited to the following:

*(i)* WT's establishing of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to WT's failure to comply with this Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

*(ii)* WT's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of WT to take actions consistent with WT's obligations under this Agreement;

*(iii)* A criminal or civil penalty or sanction imposed on WT by a regulator or other governmental authority or agency with oversight over WT's compliance with the AML/KYC procedures, if applicable, to which WT is subject and that is imposed

due to WT's failure to properly identify beneficiaries or owners under the requirements of those procedures; or

(iv) A finding (including a finding noted in the reviewer's periodic review report described in section 8.06 of this Agreement) that, for one or more years covered by this Agreement, WT failed to —

(a) Withhold an amount that WT was required to withhold under chapter 3 or 4 as required under section 3 of this Agreement;

(b) Make deposits in the time and manner required by section 3.05 of this Agreement or make adequate deposits to satisfy its withholding obligations, taking into account the procedures under section 7 of this Agreement; or

(c) Report accurately on Forms 1042, 1042-S, 8966 (or similar report of U.S. reportable accounts as required under a Model 1 IGA), 3520-A, and the Owner Statements and Beneficiary Statements that are part of Form 3520-A, as required under section 6 of this Agreement.

(2) *Limitations on Material Failures.* A failure described in section 8.03(B)(1)(iv) of this Agreement is a material failure only if the failure was the result of a deliberate action on the part of WT's trustee or one or more employees or agents of WT's trustee to avoid the requirements of this Agreement or WT's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI with respect to one or more beneficiaries or owners of WT, or was an error attributable to a failure of WT to establish or implement internal controls necessary for WT to meet the requirements of this Agreement. Regardless of these limitations for the certifications described in sections 8.03(A) and (B) of this Agreement, WT is required to correct a failure to withhold or deposit tax under section 3 of this Agreement or to report under section 6 of this Agreement.

(C) *Certification Period and Certification Due Date.*

(1) *Certification Due Date.* For a WT that uses the last year of the certification period for its periodic review, the certification is due on or before December 31 of the calendar year following the end of the certification period. For a WT that uses a year other than the last year of the certification period for its periodic review, the

certification is due on or before July 1 of the year following the certification period.

(2) *Certification Period.* The initial certification period is the period beginning on the effective date of the WT agreement and ending on the third full calendar year that this Agreement is in effect (including renewals of this Agreement). Subsequent certification periods will be every three calendar years following the initial certification period (including renewals of this Agreement).

(3) *FATCA Certifications.* The certification period described in section 8.03(C)(2) of this Agreement may not be the same as the certification period (if any) applicable to WT's FATCA requirements as a participating FFI or registered deemed-compliant FFI. WT is required to make the certification required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI at the time and in the manner specified in such requirements.

#### **Sec. 8.04. Periodic Review.**

(A) *Independent Reviewer.* The periodic review may be performed by an internal reviewer (such as an internal auditor) that is an employee or agent of the trustee of WT (internal reviewer) or a certified public accountant, attorney, or third-party consultant (external reviewer), or any combination thereof.

(1) *Internal Reviewer.* WT may designate an internal reviewer to perform the periodic review (or a portion of the periodic review) only when the internal reviewer is competent with respect to the requirements of this Agreement. The internal reviewer must also be able to report findings that reflect the independent judgment of the reviewer. The internal reviewer must not be reviewing its own work, procedures, or results (e.g., the internal reviewer reviewing WT's documentation cannot be part of the team primarily responsible for collecting and validating documentation). The results of the periodic review and the internal reviewer's reporting of such results to the responsible officer cannot influence or affect the compensation, bonus, employment status, or employee review of the internal reviewer. The IRS has the right to request the performance of the periodic review by an alternative reviewer if the IRS, in its sole discretion, reasonably believes that the re-

viewer selected by WT was not independent, as described in this Agreement, or did not perform an effective periodic review under this Agreement.

(2) *External Reviewer.* WT may engage an external reviewer that is a certified public accountant, attorney, or third-party consultant that is regularly engaged in the practice of performing reviews of clients' policies, procedures, and processes for complying with accounting, tax, or regulatory requirements (including for assisting clients in determining such compliance). The external reviewer cannot be reviewing systems, policies, or procedures or the results thereof that it (or the firm with which it is affiliated) was involved in designing, implementing, or maintaining. The external reviewer must be in good standing with and comply with any applicable professional standards for maintaining its license as an accountant or attorney (or other third-party consultant that has similar professional standards or requirements). The external reviewer is not required to make an attestation or render an opinion regarding WT's compliance with this Agreement or WT's compliance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, but the reviewer must be able to perform the periodic review as specified in section 8.05 of this Agreement. WT must permit the external reviewer access to all relevant records of WT for purposes of performing the review, including information regarding specific beneficiaries or owners. Additionally, the engagement between the external reviewer and WT must impose no restrictions on WT's ability to provide the results of the review to the IRS. However, the external reviewer is not required to divulge the identity of WT's foreign beneficiaries or owners to the IRS, except as otherwise required under WT's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. WT must permit the IRS to communicate directly with the external reviewer and any legal prohibitions that prevent the IRS from communicating directly with the reviewer must be waived.

**Sec. 8.05. Scope and Timing of Review.** The responsible officer of WT must re-

quire the reviewer to review WT's documentation, withholding, reporting, and other obligations under this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, and identify deficiencies in meeting these obligations. To the extent WT applies the joint account option with respect to another partnership or trust as described in section 9.01 of this Agreement or acts as a withholding foreign trust for any indirect beneficiaries or owners as described in section 9.03 of this Agreement, the review must include such indirect partners, beneficiaries, or owners in addition to WT's direct beneficiaries or owners. In addition, if WT applies the agency option to a partnership or trust as described in section 9.02 of this Agreement, the review must include the partners, beneficiaries, or owners of such partnership or trust unless the partnership or trust conducts its own review in accordance with this section 8 of this Agreement and provides the responsible officer of WT with the report documenting the results of such review as described in section 8.06 of this Agreement. Unless otherwise approved by the IRS, the review must include the steps described in sections 8.05(A) through (D) of this Agreement. WT is required to arrange for the performance of one review for the certification period to evaluate WT's documentation, withholding, and reporting practices. The review may be conducted for any calendar year covered by the certification period. WT may conduct a review for a particular calendar year if, on the due date for reporting the factual information relating to the periodic review (provided in section 8.04 of this Agreement), there are 15 or more months available on the period for assessment under section 6501(a) of the calendar year for which the review is to be conducted or the WT submits, upon request, a Form 872, Consent to Extend the Time to Assess Tax, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 11.06 of this Agreement.

If WT has more than 60 beneficiaries or owners for which WT acts for the year of the periodic review, WT's reviewer may use statistical sampling procedures for the

periodic review if the reviewer applies the principles set forth in Appendix II to the QI Agreement in Revenue Procedure 2017-15, 2017-03 I.R.B. 437.

If the reviewer determines that underwithholding has occurred, WT shall pay any amount determined and report both the underwithholding determined by the review and any amount of underwithholding that was cured following the review by obtaining the documentation required to support reduced withholding by WT (without regard to projection if statistical sampling is used for the review). WT must also notify the IRS Foreign Intermediaries Program at the address provided in section 11.06 of this Agreement of the underwithholding discovered as a result of the review within 30 days of the completion of the review.

(A) *Documentation.* The reviewer must—

(1) Review information contained in documentation obtained for WT's beneficiaries or owners and any correspondence or memoranda associated with the beneficiaries or owners (the beneficiaries' or owners' files) to ensure that WT obtained documentation that meets the requirements described in section 4 of this Agreement (including the treaty statements and limitation on benefits information required by section 4.03(B) of this Agreement for partners making treaty claims);

(2) Review information contained in the beneficiaries' or owners' files to determine if the documentation validity standards of section 4.10 of this Agreement have been met. For example, the reviewer must verify that WT is withholding at the correct rate after any change in circumstances (e.g., a change of address to a U.S. address or change of account holder status from foreign to U.S. or change of account holder status from foreign to U.S. or a change in chapter 4 status from participating FFI to nonparticipating FFI); and

(3) Review WT's beneficiaries' or owners' files to ensure that WT is obtaining, reviewing, and maintaining documentation in accordance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

(B) *Withholding Responsibilities.* The reviewer must—

(1) Perform test checks of WT's direct beneficiaries or owners that are recalci-

trant account holders (if applicable) and nonparticipating FFIs to verify that WT is withholding as required under chapter 4; (2) Perform test checks of foreign beneficiaries or owners for which no withholding is required under chapter 4 based on the beneficiary's or owner's chapter 4 status to verify that WT withheld the proper amounts; and

(3) Verify that amounts withheld by WT were timely deposited in accordance with section 3.05 of this Agreement.

(C) *Return Filing and Information Reporting.* The reviewer must—

(1) Obtain copies of original and amended Forms 1042, and any schedules, statements, or attachments required to be filed with those forms, and verify that the forms have been filed and determine whether the amounts of income, taxes, and other information reported on those forms are accurate by—

(i) Reviewing copies of Forms 1042-S received from withholding agents for reconciling amounts received by WT with the amounts distributed to, or included in the distributive share of, WT's beneficiaries or owners;

(ii) Reviewing account statements and correspondence from withholding agents;

(iii) Determining that adjustments to the amount of tax shown on Form 1042 (and any claim by WT for refund or credit) properly reflect the adjustments to withholding made by WT using the reimbursement or set-off procedures under section 7 of this Agreement and that the adjustments are supported by sufficient documentation;

(iv) Reconciling amounts shown on Forms 1042 with amounts shown on Form 1042-S (including the amount of taxes reported as withheld); and

(v) In the case of collective credits or refunds, reviewing the statements attached to the amended Forms 1042 filed to claim a collective credit or refund, determine whether those forms are accurate, and—

(a) Determining the causes of any overwithholding reported and ensure WT did not issue Forms 1042-S to beneficiaries or owners that were included as part of its collective credit or refund claim;

(b) Determining that WT repaid the appropriate beneficiaries or owners and that the amount of the claim is accurate and

supported by adequate documentation for reducing the rate of withholding; and

(c) Determining that WT did not include payments made to a beneficiary or owner described in section 7.02(A) of this Agreement or a partnership or trust described in section 9.01 of this Agreement. (2) Obtain copies of original and amended Forms 1042-S, 3520-A, and the Owner Statements and Beneficiary Statements filed by WT together with the work papers used to prepare those forms and determine whether the amounts reported on those forms are accurate by—

(i) Reviewing the Forms 1042-S received from withholding agents;

(ii) Reviewing the Form 3520-A, if required, and if no Form 3520-A was required to be filed, determining whether the exemption from filing was properly applied;

(iii) Reviewing Owner Statements and Beneficiary Statements issued by WT to beneficiaries or owners, if any;

(iv) Reconciling any payments and tax reported on Forms 1042-S received from withholding agents with amounts (including characterization of income) and taxes reported by WT as withheld on Forms 1042-S and determining the reason(s) for any variance; and

(v) Determining, in any case in which WT utilized the reimbursement or set-off procedure, that WT satisfied the requirements of section 7 of this Agreement and that the adjusted amounts of tax withheld are properly reflected on Forms 1042-S.

(3) Obtain copies of original and amended Form 8966 (or, if WT is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to an applicable Model 1 IGA), and determine whether the amounts of income and other information reported on Form and 8966 are accurate by—

(i) Reviewing the U.S. beneficiaries and owners of WT (including beneficiaries holding U.S. accounts (or U.S. reportable accounts)) to determine—

(a) That such accounts were reported on Form 8966 (or, if WT is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to an applicable Model 1 IGA) in accordance with WT's FATCA requirements as a participating FFI, registered deemed-

compliant FFI, or registered deemed-compliant Model 1 IGA FFI; and

(b) That U.S. beneficiaries otherwise required to be reported on Form 8966 (or, if WT is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to an applicable Model 1 IGA) under section 6.05(D) of this Agreement are so reported;

(ii) If WT is an NFFE, confirming that any direct beneficiaries or owners that are passive NFFEs with one or more substantial U.S. owners were reported in accordance with § 1.1472-1(c)(3);

(iii) Confirming with respect to any pass-through beneficiary or owner that provides information regarding an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners that such substantial U.S. owners were reported to the extent required under section 6.05(C) of this Agreement;

(iv) Reviewing the documentation provided by a partnership or trust to which WT applied the agency option, confirming that WT reported on Form 8966 (or, if WT is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to an applicable Model 1 IGA) to the extent required under section 9 of this Agreement; and

(v) Reviewing work papers used to prepare these forms.

(D) *Significant Change in Circumstances.* The reviewer must verify that in the course of the review it has not discovered any significant change in circumstances, as described in section 10.04(A), (D), or (E) of this Agreement.

#### **Sec. 8.06. Periodic Review Report.**

(A) *In General.* The results of the periodic review must be documented in a written report addressed to the responsible officer of WT and must be available to the IRS upon request (with a certified translation into English if the report is not in English). The report must describe the scope of the review and the actions performed to satisfy each requirement of section 8.05(A) through (D). The report may include explanatory footnotes to clarify the results of the report. Recommendations may be included but are not required to be provided in the report. The periodic review report should form the basis for the factual information provided by WT that

is set forth in the Appendix to this Agreement.

In addition to the findings of section 8.05 of this Agreement, the periodic review report must also include details regarding the documentation and tax deposit and payment failures identified by the reviewer but then cured before the periodic review report is finalized. While the curing of inadequate documentation is permissible, the factual information reported (as set forth in the Appendix to this Agreement) should report the results of the review as it was performed and should not reflect the results after curing. Any curing process should not delay certification of internal controls or factual information required in the Appendix to this Agreement. To the extent necessary, the periodic review report should include the dates on (or time period during) which curative documentation was received for beneficiaries or owners with respect to which the reviewer determined that underwithholding had occurred, the number of beneficiaries or owners for which curative documentation was obtained, and a revised calculation of the underwithholding. (B) *Partnership or Trust to which WT Applies the Agency Option.* Any partnership or trust to which WT applies the agency option and that does not provide documentation and other information to WT for inclusion in WT's periodic review described in section 8.04 of this Agreement must conduct an independent periodic review in accordance with the compliance procedures described in section 8.05 of this Agreement. The performance results of the periodic review must be documented in a written report addressed to the responsible officer of WT and must be available to the IRS upon request (with a certified translation into English if the certification is not in English).

(C) *Retention of Report and Certifications.* The report and certifications described in this section 8.06 must be retained by WT for as long as this Agreement is in effect (including renewals of this Agreement).

#### **Sec. 8.07. Waiver of Periodic Review Requirement.**

(A) *In General.* A WT that is an FFI that meets the requirements of section 8.07(B) of this Agreement may apply for a waiver of the periodic review requirement. The

waiver application is set forth in Part III of the Appendix to this Agreement. WT must include the information of any partnership or trust to which WT applies the agency option in its waiver application. WT must request a waiver under this section 8.07 at the time the responsible officer makes the certification described in section 8.03 of this Agreement. WT's request for such a waiver must be approved by the IRS, and waiver requests are not approved automatically. If WT's request for a waiver is approved, such approval is only to waive WT's obligations under sections 8.04 and 8.05 of this Agreement, and WT is still required to make the certification described in section 8.03 of this Agreement. The waiver does not preclude the IRS from requesting information or conducting a correspondence review as described in section 8.08 of this Agreement. WT must apply for a waiver for each certification period for which a waiver is requested.

*(B) Eligibility.* WT is eligible to apply for a waiver of the periodic review requirement if it meets the following requirements—

- (1) WT must be an FFI;
- (2) For each calendar year covered by the certification period, the reportable amounts received by WT cannot exceed \$1 million;
- (3) WT must have timely filed its Forms 1042, 1042-S, and 8966 (or the reporting required under an applicable IGA), and 3520-A, as applicable, for all years (fiscal or calendar) in the certification period;
- (4) WT must have made all periodic certifications and reviews required by sections 8.02 and 8.03 of this Agreement for each certification period, as well as any certifications required pursuant to WT's FATCA requirements as a participating FFI or registered deemed-compliant FFI; and
- (5) WT must make the certification of effective internal controls described in Part II.A of the Appendix to this Agreement for the certification period for which WT is applying for a waiver of the periodic review.

*(C) Documentation Required with Waiver Application.* When applying for a waiver under this section 8.07, WT must include the information described in Part III.B of the Appendix to this Agreement using the most recent calendar year in the certifica-

tion period for which filing is due and reporting such results without any curing or remediation.

*(D) Approval.* If WT's request for a waiver of the periodic review requirement is approved, the IRS will notify WT. If WT requests a waiver but such request is not approved, WT will be granted a six month extension from the date of denial of the waiver to complete the periodic review under sections 8.04 and 8.05 of this Agreement. Such extension will not be granted if WT has made the request for waiver in bad faith.

#### **Sec. 8.08. IRS Review.**

*(A) In General.* Based upon the certifications made by the responsible officer and disclosure of material failures, the information reported on Forms 1042, 1042-S, 8966, 3520-A and the Owner Statements and Beneficiary Statements filed with the IRS during the certification period, or otherwise at the IRS's discretion for compliance purposes, the IRS may initiate requests of WT under this section 8.08. The IRS may request remediation or the conduct of a limited periodic review earlier than the time period provided in this section if, based on the information described above, the IRS identifies, in its discretion, a presence of factors indicating systemic or significant compliance failures by WT. The IRS may also request that WT designate a replacement responsible officer if WT's responsible officer has not complied with its responsibilities (including responding to requests by the IRS for additional information) or the IRS has information that indicates the responsible officer may not be relied upon to comply with its responsibilities.

*(B) Periodic Review Report.* The IRS may request through written correspondence to the responsible officer of WT a copy of the results of WT's periodic review for any prior certification period or the periodic review report of any partnership or trust to which WT applied the agency option during the current certification period (with a certified translation into English if the report is not in English). WT is required to provide the results within 30 calendar days of such request.

*(C) Correspondence Review.* The IRS may, in its discretion, conduct additional fact finding through a correspondence review. In such a review, the IRS will con-

tact the responsible officer of WT in writing and request information about WT's compliance with this Agreement or the compliance of a partnership or trust to which WT applied the agency option, including, for example, information about documentation, withholding, or reporting processes, its periodic review, and information about any material failures that were disclosed to the IRS (including remediation plans). The IRS may request phone or video interviews with relevant personnel of WT or a partnership or trust to which WT applied the agency option as part of such review. WT is required to respond within a reasonable period of time to any such requests.

*(D) Additional Review Procedures.* In limited circumstances, the IRS may direct WT or any partnership or trust described in section 9.02 of this Agreement to which WT applies the agency option to perform additional, specified review procedures. The IRS reserves the right to require WT or a partnership or trust to which WT applied the agency option to engage an external reviewer to perform the additional review procedures regardless of whether such reviewer performed the periodic review. The IRS will provide the responsible officer of WT with a written plan describing the additional review procedures and will provide a period of not more than 120 days within which the WT must provide to the IRS a report covering the reviewer's findings.

## **Section 9. CERTAIN PARTNERSHIPS AND TRUSTS**

### **Sec. 9.01. Joint Account Treatment for Certain Partnerships and Trusts.**

*(A) In General.* WT may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in this section 9.01(A) to apply the simplified joint account documentation, reporting, and withholding procedures provided in section 9.01(B) of this Agreement. WT and the partnership or trust that apply this section 9.01 to any calendar year must apply these rules to the calendar year in its entirety. WT and the partnership or trust may not apply this section 9.01 to any calendar year in which the partnership or trust has failed to make available to WT or WT's reviewer the

records described in section 9.01(A)(5) of this Agreement within 90 days after these records are requested and the partnership or trust must waive any legal prohibitions against providing such records to WT. If the partnership or trust has failed to make these records available within the 90-day period, or if WT and the partnership or trust fail to comply with any other requirements of this section 9.01, WT must apply the provisions of §§ 1.1441-1 and 1.1441-5 to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, must correct its withholding for the period during which the failure occurred in accordance with section 7.03 of this Agreement, and cannot apply this section 9.01 to subsequent calendar years. WT and the partnership or trust that apply this section 9.01 to any calendar year are not required to apply this section 9.01 to subsequent calendar years.

A partnership or trust is described in this section 9.01(A) if the following conditions are met.

(1) The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI, an owner-documented FFI with respect to WT, an exempt beneficial owner, or an NFFE, and has provided WT with a certification that it has maintained such chapter 4 status at all times during each certification period;

(2) The partnership or trust is a direct beneficiary or owner of WT;

(3) None of the partnership's or trust's partners, beneficiaries, or owners is a flow-through entity or intermediary;

(4) None of the partnership's or trust's partners, beneficiaries, or owners is a U.S. person and none of its foreign partners, beneficiaries, or owners is subject to withholding or reporting under chapter 4 (e.g., a nonparticipating FFI or certain passive NFFEs); and

(5) The partnership or trust agrees to make available upon request to WT and WT's reviewer for purposes of WT's periodic review under section 8 of this Agreement (including to respond to IRS inquiries regarding its compliance review) records that establish that the partnership or trust has provided WT with documentation for purposes of chapters 3 and 4 for all of its partners, beneficiaries, or owners.

*(B) Modification of Obligations for WT.*

(1) WT may rely on a valid Form W-8IMY provided by the partnership or trust and may rely on a withholding statement that meets the requirements of §§ 1.1441-5(c)(3)(iv) or (e)(5)(iv) and 1.1471-3(c)(3)(iii)(B) (if the payment is a withholdable payment) and that provides information for all partners, beneficiaries, or owners together with valid Forms W-8 and, for a withholdable payment made to a partner, beneficiary, or owner that is an entity, documentation required under § 1.1471-3(d) to establish such partner's, beneficiary's, or owner's chapter 4 status. The withholding statement, however, need not provide any allocation information.

(2) WT must treat amounts distributed to, or included in the distributive share of, the partnership or trust as allocated solely to a partner, beneficiary, or owner that is subject to the highest rate of withholding under chapter 3 and must withhold at that rate.

(3) WT may pool report amounts distributed to, or included in the distributive share of, the partnership's or trust's direct partners, beneficiaries, or owners in WT's chapter 3 reporting pools on Form 1042-S as described in section 6.02(D) of this Agreement.

(4) After WT has withheld in accordance with section 9.01(B)(2) of this Agreement, it may file a separate Form 1042-S for any partner, beneficiary, or owner who requests that it do so. If WT issues a separate Form 1042-S for any partner, beneficiary, or owner, it cannot include such partner, beneficiary, or owner in its chapter 3 reporting pool. If WT has already filed a Form 1042-S and included the partner, beneficiary, or owner in a chapter 3 reporting pool, it must file an amended return to reduce the amount of the payment reported to reflect the amount allocated to the recipient on the recipient's specific Form 1042-S. WT may file a separate Form 1042-S for a partner, beneficiary, or owner only if the partnership or trust provides a withholding statement that includes allocation information for the requesting partner, beneficiary, or owner and only if the partnership or trust has agreed in writing to make available to WT or WT's reviewer the records that substantiate the allocation information included in its withholding statement.

(5) WT may not include any amounts distributed to, or included in the distributive share of, a partnership or trust to which WT is applying the rules of this section 9.01 in any collective refund claim made under section 7.02 of this Agreement.

### **Sec. 9.02. Agency Option for Certain Partnerships and Trusts.**

*(A) In General.* WT may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in section 9.02(A) of this Agreement under which the partnership or trust agrees to act as an agent of WT with respect to its partners, beneficiaries, or owners, and, as WT's agent, to apply the provisions of the WT agreement to the partners, beneficiaries, or owners. By entering into an agreement with a partnership or trust as described in this section 9.02, WT is not assigning its liability for the performance of any of its obligations under the WT agreement. WT and the partnership or trust to which WT applies the rules of this section 9.02 are jointly and severally liable for any tax, penalties, and interest that may result from the failure of the partnership or trust to meet any of the obligations imposed by its agreement with WT. WT and the partnership or trust that applies the agency option to any calendar year must apply these rules to the calendar year in its entirety. Generally, WT and the partnership or trust that apply the agency option to any calendar year are not required to apply the agency option to subsequent calendar years. If, however, WT withholds and reports any adjustments required by corrected information in a subsequent calendar year under section 9.02(B)(2) of this Agreement, WT must apply the agency option to that calendar year in its entirety.

If the partnership or trust is included in WT's periodic review of compliance as described in section 9.02(A)(6) of this Agreement, WT and the partnership or trust may not apply the agency option to any calendar year in which the partnership or trust has failed to make available to WT or WT's reviewer the records described in this section 9.02 within 90 days after these records are requested and the partnership or trust must waive any legal prohibitions against providing such records to the WT. If, for any calendar year, the partnership

or trust has failed to make these records available within the 90-day period, or if WT and the partnership or trust fail to comply with any other requirement of this section 9.02, WT must apply §§ 1.1441-1 and 1.1441-5 to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, correct its withholding for the period in which the failure occurred in accordance with section 7.03 of this Agreement, and cannot apply this section 9.02 to subsequent calendar years.

A partnership or trust is described in this section 9.02(A) if the following conditions are met:

(1) The partnership or trust is either a direct beneficiary or owner of WT or an indirect beneficiary or owner of WT that is a direct partner, beneficiary, or owner of a partnership or trust to which WT also applies this section 9.02.

(2) The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI, an owner-documented FFI with respect to WT, an NFFE, or an exempt beneficial owner, and has provided WT with a certification that it has maintained such chapter 4 status during each certification period.

(3) None of the partnership's or trust's partners, beneficiaries, or owners is a WP, WT, participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or QI acting as an intermediary for a payment made by WT to the partnership or trust.

(4) WT may not act as a withholding foreign trust with respect to any direct or indirect beneficiary or owner of the partnership or trust that is a U.S. non-exempt recipient, unless the U.S. non-exempt recipient is an owner of an owner-documented FFI or passive NFFE to which WT applies the agency option and is included in WT's U.S. payee pool (described in section 6.02(C) of this Agreement).

(5) The partnership or trust agrees to comply with the documentation requirements described in section 4 of this Agreement.

(6) The partnership or trust agrees, to the extent necessary for WT to satisfy its compliance obligations, either to (i) conduct an independent periodic review in accordance with the procedures described in section 8.05 of this Agreement and

provide WT with the certification required under section 8.03 of this Agreement for each certification period in order to allow the responsible officer of WT to make a certification to the IRS regarding the partnership's or trust's compliance with this section 9.02, or (ii) provide WT with documentation or other information for inclusion in WT's periodic review described in section 8.04 of this Agreement. The partnership or trust must also agree to respond (either directly or through WT) to IRS inquiries regarding its compliance review, as described in section 8.08 of this Agreement, including, if applicable, providing the WT and the IRS with the results of the reviewer's testing of partners, beneficiaries, or owners described in section 8.06 of this Agreement.

*(B) Modification of Obligations for WT.*

(1) WT may rely on a valid Form W-8IMY provided by the partnership or trust, together with a withholding statement described in §§ 1.1441-5(c)(3)(iv) or (e)(5)(iv) and 1.1471-3(c)(3)(iii)(B) (if the payment is a withholdable payment) that includes all information necessary for WT to fulfill its withholding, reporting, and filing obligations under this Agreement. For a withholdable payment, the withholding statement may include a chapter 4 withholding rate pool (as defined in § 1.1471-1(b)(20)) of nonparticipating FFIs for payments of amounts subject to chapter 4 withholding. The withholding statement may also include chapter 3 withholding rate pools for partners, beneficiaries, or owners that are not intermediaries, flow-through entities (or persons holding interests in the partnership or trust through such entities), U.S. non-exempt recipients, or passive NFFEs with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable Model 1 or Model 2 IGA), and the partnership or trust need not provide to WT documentation for these partners, beneficiaries, or owners. Notwithstanding the preceding sentences of this section 9.02(B)(1), the partnership or trust is required to disclose to WT any partner or interest holder that is a passive NFFE with substantial U.S. owners (or controlling persons that are specified U.S. persons under an applicable IGA) or that is a U.S. non-exempt recipient as well as the ac-

count holders of any nonqualified intermediary or interest holders in a flow-through entity which has an interest in the partnership or trust, and provide all of the documentation and other information relating to those account holders and interest holders that is required for WT or another withholding agent to report the payments made to those account holders and interest holders to the extent required by section 6 of this Agreement.

*(2) Timing of Withholding.* WT must withhold on the date an amount is distributed to, or included in the distributive share of, the partnership or trust based on a withholding statement provided by the partnership or trust on which WT is permitted to rely. The amount allocated to each partner, beneficiary, or owner in the withholding statement may be based on a reasonable estimate of the partner's, beneficiary's, or owner's distributive share of income subject to withholding for the year. The partnership or trust must correct the estimated allocations to reflect the partner's, beneficiary's, or owner's actual distributive share and must provide this corrected information to WT on the earlier of the date that the statement required under section 6031(b) (i.e., Schedule K-1) or the Owner Statement or Beneficiary Statement is mailed or otherwise provided to the partner, beneficiary, or owner or the due date for furnishing the statement (whether or not the partnership or trust is required to prepare and furnish the statement). If that date is after the due date (without regard to extensions) for WT's Forms 1042 and 1042-S for the calendar year, WT may withhold and report any adjustments required by correcting the information in the following calendar year.

*(3) Payments Reportable under Chapters 3 and 4.* WT shall report on Form 1042-S all amounts subject to chapters 3 and 4 withholding distributed to, or included in the distributive share of, the partnership or trust as follows:

(i) For a direct partner, beneficiary, or owner of the partnership or trust that is a nonparticipating FFI, WT shall report an amount subject to withholding using the chapter 4 reporting pool described in section 6.02(C) of this Agreement with the partnership or trust reported as the recipient.

(ii) For a direct partner, beneficiary, or owner of the partnership or trust that is a

foreign person for which no withholding is required under chapter 4 (other than an intermediary, agent, or flow-through entity described below), WT shall report an amount subject to chapter 3 withholding using the chapter 3 reporting pools as described in section 6.02(D) of this Agreement with the partnership or trust reported as the recipient.

(iii) For a direct or indirect partner, beneficiary, or owner of the partnership or trust that is a nonqualified intermediary or flow-through entity, WT shall report payments of amounts subject to chapter 4 withholding included in a chapter 4 withholding rate pool of nonparticipating FFIs using the chapter 4 reporting pool for such partner, beneficiary, or owner with the nonqualified intermediary or flow-through entity reported as the recipient, and WT shall report payments of amounts subject to chapter 3 withholding that are not withholdable payments or are withholdable payments for which no chapter 4 withholding is required by reporting the payments as made to specific recipients as described in 6.02(B) of this Agreement.

(4) *Form 8966 Reporting Requirements.* If WT is an FFI and if the partnership or trust is a U.S. account (or U.S. reportable account), WT is required to report the partnership or trust consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. The agreement between WT and the partnership or trust must also provide that WT shall report withholdable payments that the partnership or trust distributes to, or includes in the distributive share of, a partner, beneficiary, or owner that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA) and is the beneficial owner of the withholdable payment received by the partnership or trust. WT must report on Form 8966 in the time and manner provided in § 1.1474-1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner (or controlling person that is a specified U.S. person); the name, address, and U.S. TIN of each substantial U.S. owner (or controlling person that is a specified U.S. person); the total of all

withholdable payments made to the NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions.

(C) *Other Requirements of Agency Agreement.* WT shall require the partnership or trust to which it applies the agency option described in this section 9.02 to provide WT with all the information necessary for WT to meet its obligations under this Agreement. No provisions shall be contained in the agreement between WT and the partnership or trust that preclude, and no provisions of this Agreement shall be construed to preclude, the partnership's or trust's joint and several liability for tax, penalties, and interest under chapters 3 and 4 to the extent that underwithholding, penalties, and interest have not been collected from WT and the underwithholding or failure to report amounts correctly on Forms 1042, 1042-S or 8966, is due to the partnership's or trust's failure to properly perform its obligations under its agreement with WT. Nothing in the agreement between WT and the partnership or trust shall be construed to limit the partnership's or trust's requirements under chapter 4 as a certified deemed-compliant FFI, an owner-documented FFI with respect to WT, an NFFE, or an exempt beneficial owner. Further, nothing in the agreement between WT and the partnership or trust shall permit the partnership or trust to assume primary chapters 3 and 4 withholding responsibility.

### **Sec. 9.03. Indirect Beneficiaries or Owners of WT.**

(A) *General Requirements.* WT may act as a withholding foreign trust for reportable amounts distributed to, or included in the distributive share of, passthrough beneficiaries or owners and indirect beneficiaries or owners if such indirect beneficiary or owner is not a U.S. non-exempt recipient. Notwithstanding the preceding sentence, WT may act as a withholding foreign trust with respect to an indirect beneficiary or owner that is a U.S. non-exempt recipient if the indirect beneficiary or owner is included in a passthrough beneficiary's or owner's chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees. WT does not need to use the agency option described in section 9.02 of this Agreement or make the

pooled reporting election described in section 6.02(D) of this Agreement to apply the procedures described in this section 9.03.

#### *(B) Modification of Obligations for WT.*

(1) Except to the extent described in this section 9.03(B), WT need not forward the documentation and the withholding statement of the passthrough beneficiary or owner and indirect beneficiary or owner to WT's withholding agent;

(2) WT must provide its withholding agent with documentation and other information from any passthrough beneficiary or owner whose direct or indirect beneficiary or owner is a U.S. non-exempt recipient (unless such U.S. non-exempt recipient is included in a chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees);

(3) WT will assume primary chapters 3 and 4 withholding responsibility as described in section 3 of this Agreement and must report on its indirect beneficiaries or owners on a specific payee basis on Form 1042-S (except to the extent such indirect beneficiaries or owners are included in a passthrough beneficiary's or owner's chapter 4 withholding rate pool or a QI's withholding rate pool) as described in section 6.02(B) of this Agreement, regardless of whether WT made a PR election for its direct beneficiaries or owners under section 6.02(D) of this Agreement; and

(4) WT must include any passthrough beneficiary or owner and indirect beneficiary or owner for which it acts as a withholding foreign trust in its periodic review as described in section 8.05 of this Agreement.

(C) *Documentation from Passthrough Beneficiary or Owner.* WT agrees to use its best efforts to obtain from a passthrough beneficiary or owner the documentation of an indirect beneficiary or owner for which WT acts as a withholding foreign trust. Unless WT can reliably associate an amount distributed to, or included in the distributive share of, any passthrough beneficiary or owner with valid documentation from such beneficiary or owner within the meaning of § 1.1441-1(b)(2)(vii) and, for a withholdable payment, § 1.1471-3(c), WT shall apply the presumption rules described in §§ 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5(d) and (e)(6), 1.1441-9(b)(3), and

1.6049–5(d) and for a withholdable payment made to an entity, § 1.1471–3(f) or, if WT is an FFI, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. Generally, WT can reliably associate an amount with documentation provided by a passthrough beneficiary or owner if WT obtains—

(1) A valid Form W–8IMY provided by the passthrough beneficiary or owner that, if the payment is a withholdable payment, establishes the chapter 4 status of the passthrough beneficiary or owner; and

(2) If the payment is a withholdable payment, a withholding statement that meets the requirements of § 1.1471–3(c)(3)(iii)(B) that includes the account holders or interest holders of the passthrough beneficiary or owner in chapter 4 withholding rate pools to the extent permitted, and, for an amount subject to chapter 3 withholding that is not a withholdable payment or is a withholdable payment for which chapter 4 withholding is not required, valid documentation described in section 4 of this Agreement provided by account holders or interest holders of the passthrough beneficiary or owner that are not themselves non-qualified intermediaries or flow-through entities.

WT may not reduce the rate of withholding with respect to an indirect beneficiary or owner that is a foreign beneficial owner for which it acts as a WT unless WT can reliably associate the payment with valid documentation that establishes the indirect beneficiary's or owner's entitlement to a reduced rate of withholding under chapter 3 and, in the case of a withholdable payment, establishes that chapter 4 withholding does not apply.

(D) *Timing of Withholding.* WT must withhold on the date an amount is distributed to, or included in the distributive share of, the passthrough beneficiary or owner based on a withholding statement provided by the passthrough beneficiary or owner on which WT is permitted to rely. The amount allocated to each indirect beneficiary or owner in the withholding statement may be based on a reasonable estimate of the indirect beneficiary's or owner's distributive share of income subject to withholding for the year. The passthrough beneficiary or owner must

agree to correct the estimated allocations to reflect the indirect beneficiary's or owner's actual distributive share and must provide this corrected information to WT, on the earlier of the date that the statement required under section 6048(b) of the Code is mailed or otherwise provided to the indirect beneficiary or owner or the due date for furnishing the statement (whether or not the passthrough beneficiary or owner is required to prepare and furnish the statement). If that date is after the due date (without regard to extensions) for WT's Forms 1042 and 1042–S for the calendar year, WT may withhold and report any adjustments required by correcting the information in the following calendar year.

(E) *Form 8966 Reporting Requirements.* If WT is an FFI and if the passthrough beneficiary or owner is a U.S. account (or U.S. reportable account), WT is required to report the partnership or trust consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. WT shall also report withholdable payments that WT distributes to, or includes in the distributive share of, a passthrough beneficiary or owner if an account holder or interest holder of such passthrough beneficiary or owner is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA) and if the NFFE is the beneficial owner of the withholdable payment received by the passthrough beneficiary or owner. WT must report on Form 8966 in the time and manner provided in § 1.1474–1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner (or controlling person that is a specified U.S. person); the name, address, and U.S. TIN of each substantial U.S. owner (or controlling person that is a specified U.S. person); the total of all withholdable payments made to the NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions. WT is not required to report, however, to the extent permitted under § 1.1474–1(i)(2), on a payment made to a participating FFI or registered deemed-

compliant FFI if the passthrough beneficiary or owner certifies on its withholding statement that it is reporting the account holder (or interest holder) as a U.S. account pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

## **Section 10. EXPIRATION, TERMINATION AND DEFAULT**

**Sec. 10.01. Term of Agreement.** This Agreement begins on the effective date, as described in section 12 of this Agreement, and expires upon the earlier of the date WT terminates under the trust instrument or the end of the sixth full calendar year the Agreement is in effect, unless terminated under section 10.02 or 10.03 of this Agreement. This Agreement may be renewed for additional terms as provided in section 10.07 of this Agreement.

### **Sec. 10.02. Termination of Agreement (In General).**

(A) *In General.* Except as otherwise provided in section 10.03 of this Agreement, this Agreement may be terminated by either the IRS or WT prior to the end of its term by delivery of a notice, in accordance with section 11.06 of this Agreement, of termination to the other party. The IRS, however, shall not terminate this Agreement unless there has been a significant change in circumstances, as defined in section 10.04 of this Agreement, or an event of default has occurred, as defined in section 10.05 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 shall not terminate this Agreement if WT can establish to the satisfaction of the IRS that all events of default for which it has received notice have been cured within the time period agreed upon. The IRS shall notify WT that an event of default has occurred and that the IRS intends to terminate the Agreement unless WT cures the default or establishes that no event of default has occurred. A notice of termination sent by either party shall take effect on the date specified in the notice, and WT is required to notify its withholding agent of the date its status as a WT was terminated.

The termination of the Agreement shall

not affect any of WT's reporting, tax filing, withholding, depositing, or payment responsibilities arising in the calendar years for which this Agreement was in effect and the portion of the calendar year in which termination is requested. The IRS shall revoke WT's WT-EIN within a reasonable time after the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences.

After the date of termination of this Agreement, WT may not act as a withholding foreign trust, and must so notify any persons to which WT has furnished a withholding foreign trust certificate of the termination (including the date of the termination). After the date of termination of this Agreement, the IRS may reinstate this Agreement (or the IRS may require WT to enter into a new WT agreement) on such terms and conditions and with such modifications as the IRS may determine.

*(B) Final Certification after a Termination of the Agreement.* Upon a termination of this Agreement, WT must provide to the IRS the certification described in section 8.03 of this Agreement covering the period from the end of the most recent certification period (or, if the first certification period has not ended, the effective date of this Agreement) to the date of termination within six months of the date of termination, regardless of whether a periodic review has been completed for such period.

### **Sec 10.03. Automatic Termination of Agreement.**

*(A) Automatic Termination.* Notwithstanding section 10.02 of this Agreement, this Agreement will terminate automatically in the event that the reviewer or the IRS (including during its compliance review described in section 8.08 of this Agreement) discovers that WT was not in possession of Forms W-8 or W-9, as applicable, or documentary evidence, as permitted under section 4.01(A) of this Agreement, for any direct beneficiary or owner at any time that withholding or reporting was required under section 3.02 of this Agreement. The automatic termination will be effective as of December 31 of the year in which the reviewer or the IRS makes that discovery.

*(B) Cure and Reinstatement after Automatic Termination.* This Agreement will be reinstated, effective the same date it automatically terminated under section 10.03(A) of this Agreement, if—

*(1)* WT obtains appropriate Forms W-8 or W-9 or documentary evidence, as permitted under section 4.01(A) of this Agreement, that relate to the time withholding or reporting was required, for each such undocumented beneficiary or owner before March 15 of the year following the year in which the Agreement automatically terminated, or

*(2)* All such undocumented beneficiaries or owners have ceased to be beneficiaries or owners in WT before March 15 of the year following the year in which the Agreement automatically terminated.

*(C) Payment of Underwithholding and Reporting upon Termination.* In the event of automatic termination of this Agreement under this section 10.03, WT must pay any underwithholding of tax, interest, and penalties that the IRS determines is attributable to each undocumented beneficiary or owner for the period during which the beneficiary or owner was undocumented based on the presumption rules, and, if WT has made a pooled reporting election for chapter 3 purposes, WT must file beneficiary or owner specific Forms 1042-S for amounts subject to chapter 3 withholding for which no chapter 4 withholding is required and Owner Statements and Beneficiary Statements as part of Form 3520-A reporting the names and addresses and other required information, as appropriate, for every undocumented beneficiary or owner from the earliest time the documentation was required for that undocumented beneficiary or owner through the date of termination. WT may, however, continue to report on a pooled basis for documented foreign direct beneficiaries or owners through this period.

**Sec. 10.04. Significant Change in Circumstances.** For purposes of this Agreement, a significant change in circumstances includes, but is not limited to—

*(A)* A change in U.S. federal law, or applicable foreign law, that affects the validity of any provision of this Agreement, materially affects the procedures contained in this Agreement, or affects WT's

ability to perform its obligations under this Agreement;

*(B)* A ruling of any court that affects the validity of any material provision of this Agreement;

*(C)* A significant change in WT's business practices that affects WT's ability to meet its obligations under this Agreement;

*(D)* If applicable, a material change in the applicable know-your-customer rules and procedures when WT relied on documentary evidence as permitted in section 4.01(A) of this Agreement;

*(E)* If WT is an FFI (other than a retirement fund), WT's failure to maintain its status as a participating FFI, registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI; or

*(F)* If WT is acting as a sponsoring entity on behalf of a sponsored FFI or sponsored direct reporting NFFE, WT's failure to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity.

**Sec. 10.05. Events of Default.** For purposes of this Agreement, an event of default occurs if WT fails to perform any material duty or obligation required under this Agreement and the responsible officer had actual knowledge of or should have known the facts relevant to the failure to perform any material duty. An event of default includes, but is not limited to, the occurrence of any of the following:

*(A)* WT fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement;

*(B)* WT underwithholds a material amount of tax that WT is required to withhold under chapter 3 or 4 and fails to correct the underwithholding or to file an amended Form 1042 reporting, and paying, the appropriate tax;

*(C)* WT makes excessive refund claims;

*(D)* WT fails to file required Forms 1040NR (if required), 1042, 1042-S, 8966, 3520-A, or the Owner Statements or Beneficiary Statements required as part of such form by the due date specified on such forms or files forms that are materially incorrect or fraudulent;

*(E)* If WT is an FFI, WT fails to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(F) If WT is a sponsoring entity, WT materially fails to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;

(G) WT fails to perform a periodic review when required or to document the findings of such review in a written report;

(H) WT fails to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects WT's obligations under this Agreement;

(I) WT fails to cure a material failure identified in the qualified certification described in Part II.B of the Appendix to this Agreement or identified by the IRS;

(J) WT makes any fraudulent statement or a misrepresentation of a material fact with regard to this Agreement to the IRS, a withholding agent, or WT's reviewer;

(K) The IRS determines that WT's reviewer is not sufficiently independent, as described in section 8.04 of this Agreement, to adequately perform its review function and WT fails to arrange for a periodic review conducted by a reviewer approved by the IRS;

(L) WT fails to make deposits in the time and manner required by section 3.05 of this Agreement or fails to make adequate deposits, taking into account the procedures of section 7.05 of this Agreement;

(M) If applicable, WT fails to inform the IRS of any change in the applicable know-your-customer rules within 90 days of the change becoming effective when WT relied on documentary evidence as permitted in section 4.01(A) of this Agreement;

(N) WT fails to cooperate with the IRS on its compliance review described in section 8.08 of this Agreement;

(O) A partnership or trust to which WT applies the agency option is in default with the agency agreement and WT fails to terminate that agreement within the time period specified in section 9.02 of this Agreement;

(P) WT fails to materially comply with the requirements of a nonwithholding foreign trust under chapter 3 with respect to any beneficiary or owner for which it does not act as a withholding foreign trust; or

(Q) WT is not in possession of valid documentation described in sections 4.01 through 4.09 of this Agreement for each direct beneficiary or owner as of the due

date of the certification described in section 8.03(C)(1) of this Agreement.

**Sec. 10.06. Notice and Cure.** Upon the occurrence of an event of default, the IRS will deliver to WT a notice of default specifying each event of default. WT must respond to the notice of default within 60 days (60-day response) from the date of the notice of default. The 60-day response shall contain an offer to cure the event of default and the time period in which to cure or shall state why WT believes that no event of default has occurred. If WT does not provide a 60-day response, the IRS will deliver a notice of termination as provided in section 10.02 of this Agreement. If WT provides a 60-day response, the IRS shall either accept or reject WT's statement that no default has occurred or WT's proposal to cure the event of default.

If the IRS rejects WT's statement that no default has occurred or rejects WT's proposal to cure the event of default, the IRS may offer a counter-proposal to cure the event of default with which WT will be required to comply within 30 days. If WT fails to provide a 30-day response, the IRS will send a notice of termination in accordance with section 10.02 of this Agreement, which WT may appeal within 30 days of the date of the notice by sending a written appeal to the address specified in section 11.06 of this Agreement. If WT appeals the notice of termination, this Agreement shall not terminate until the appeal has been decided. If an event of default is discovered in the course of a review, WT may cure the default, without following the procedures of this section 10.06, if the external reviewer's report describes the default and the actions that WT took to cure the default and the IRS determines that the cure procedures followed by WT were sufficient. If the IRS determines that WT's actions to cure the default were not sufficient, the IRS shall issue a notice of default and the procedures described in this section 10.06 shall be followed.

**Sec. 10.07. Renewal.** If WT intends to renew this Agreement, it shall submit an application for renewal to the IRS on the QI/WP/WT Application and Account Management System. This Agreement will be renewed only upon the agreement of both WT and the IRS.

## Section 11. MISCELLANEOUS PROVISIONS

**Sec. 11.01.** WT's application to become a WT, the Appendix to this Agreement, and, if WT is an FFI, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI (or, if WT is a sponsoring entity, the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity) are hereby incorporated into and made an integral part of this Agreement. This Agreement, WT's application, and the Appendix to this Agreement constitute the complete agreement between the parties.

**Sec. 11.02.** This Agreement may be amended by the IRS if the IRS determines that such amendment is needed for the sound administration of the internal revenue laws or internal revenue regulations. This Agreement will only be modified through published guidance issued by the IRS and U.S. Treasury Department. Any such modification imposing additional requirements will in no event become effective until the later of 90 days after the IRS provides notice of such modification or the beginning of the next calendar year following the publication of such guidance.

**Sec. 11.03.** Any waiver of a provision of this Agreement by the IRS 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.

**Sec. 11.04.** This Agreement shall be governed by the laws of the United States. Any legal action brought under this Agreement shall be brought only in a U.S. court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, WT agrees to submit to the jurisdiction of such U.S. court.

**Sec. 11.05.** WT's rights and responsibilities under this Agreement cannot be assigned to another person.

**Sec. 11.06.** Except as otherwise provided in the QI/WP/WT Application and Account Management System, notices provided under this Agreement shall be mailed registered, first class airmail. All notices sent to the IRS must include the WT's name, WT-EIN, GIIN (if applica-

ble), and the name of its responsible officer. Such notices shall be directed as follows:

To the IRS:

Internal Revenue Service  
Foreign Payments Practice  
Foreign Intermediaries Program  
290 Broadway, 12<sup>th</sup> Floor  
New York, NY 10007-1867

To WT:

The WT's responsible officer. Such notices shall be sent to the address indicated in the WT's registration or application (as may be amended).

**Sec. 11.07.** WT, acting in its capacity as a withholding foreign trust or in any other capacity, does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

## Section 12. EFFECTIVE DATE OF AGREEMENT

### Sec. 12.01. New Applicants.

(A) *In General.* Applications for WT status received on or before March 31 of the calendar year, if approved, will be effective January 1 of that calendar year. If an entity submits an application to be a WT after March 31 and does not receive any reportable amounts between January 1 of the calendar year in which the WT application is submitted and the date of approval, the entity will have a WT agreement with an effective date of the date it is issued a WT-EIN. All other entities applying for WT status after March 31 that are approved during the calendar year will have a WT agreement with an effective date of January 1 of the following calendar year.

(B) *Calendar Year 2017.* If a WT is approved for WT status during calendar year 2017, the rules described in section 12.01(A) of this Agreement apply, except that the WT agreement effective from January 1, 2017, to the date of issuance of this revenue procedure will be the WT agreement in Revenue Procedure 2014-47, and the WT agreement provided in this revenue procedure will be effective beginning on the date of issuance of this revenue procedure.

### Sec. 12.02. Renewal of WT Agreement.

A WT that applies to renew its WT agreement provided in Revenue Procedure 2014-47 on or before March 31, 2017, will have a WT agreement with an effective date of the date of issuance of this revenue procedure.

## APPENDIX TO WT AGREEMENT

*General Instructions:* WTs must provide the information and certifications described in this Appendix as applicable to their WT status and activities. The following Parts must be completed by the specified WTs:

Parts I and II: All WTs.

Part III: WTs eligible pursuant to section 8.07 of the WT Agreement to apply for a waiver of the periodic review requirement (as described in section 8.07 of the WT Agreement) and who wish to apply for such a waiver. WTs that are NFFEs are not eligible for a waiver.

Part IV.A-G: All WTs that have not applied for or have not been approved for a waiver.

### PART I. GENERAL INFORMATION

A. Did WT make a pooled reporting election? Y/N

B. The number of partnerships or trusts to which WT applied the agency option (if none enter 0).

1. Each partnership or trust to which WT applied the agency option has provided WT with a certification that it has maintained status as a certified deemed-compliant FFI, an owner-documented FFI with respect to WT, an NFFE, or an exempt beneficial owner as required under section 9.02(A)(2) of the WT Agreement. Y/N

2. Each partnership or trust to which WT applied the agency option has provided WT with either (1) its documentation and other information for inclusion in WT's periodic review (as described in section 9.02(A)(6) of the WT Agreement) or (2) a certification described in sec-

tion 8.03 of the WT Agreement and the results of the periodic review described in section 8.06 of the WT Agreement for the certification period. Y/N

C. The number of partnerships or trusts to which WT applied the joint account option (if none enter 0).

1. Each partnership or trust to which WT applies the joint account option has provided WT with a certification that it has maintained status as a certified deemed-compliant FFI, an owner-documented FFI with respect to WT, an exempt beneficial owner, or an NFFE as required under section 9.01(A)(1) of the WT Agreement. Y/N

### PART II: CERTIFICATION OF INTERNAL CONTROLS BY RESPONSIBLE OFFICER AND GENERAL INFORMATION

Complete either Section A (Certification of Effective Internal Controls) or Section

B (Qualified Certification). All WTs complete Sections C, D, E, and F.

#### A. Certification of Effective Internal Controls

If the responsible officer has identified an event of default or a material failure that WT has not corrected as of the date of this certification (or if an event of default or material failure has otherwise been identified), the responsible officer cannot make the certification of effective internal controls under this Section A and must make the qualified certification under Section B, below.

The responsible officer certifies to the following, check each statement to confirm:

1. WT has established a compliance program that meets the requirements described in section 8.02(B) of the WT Agreement that is in effect as of the date of the certification and during the certification period.
2. Based on the information known (or information that reasonably should

have been known) by the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer's certification of internal controls, WT maintains effective internal controls over its documentation, withholding, and reporting obligations under the WT Agreement and according to its applicable FATCA requirements for beneficiaries or owners for which it acts as a WT.

3. Based on the information known (or information that reasonably should have been known) by the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer's certification of internal controls, there are no material failures, as defined in section 8.03(B) of the WT Agreement, or, if there are any material failures, they have been corrected as of the date of this certification, and such failures are identified as part of this certification as well as the actions taken to remediate them and to prevent their reoccurrence by the date of this certification. See Part II.D.2.a of this Appendix.
4. With respect to any failure to withhold, deposit, or report to the extent required under the WT Agreement, WT has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).
5. All partnerships and trusts to which WT applies the agency option have either (a) provided documentation and other necessary information for inclusion in the WT's periodic review or (b) provided the responsible officer of WT with a certification of effective internal controls described in Part II.A of this Appendix and have represented to WT that there are no material failures, as defined in section 8.03(B) of the WT Agreement, or, if there are such failures, they have been corrected as of the time of this certification, and the partnerships or trusts have disclosed any such failures to WT together

with the actions taken by the partnership or trust to remediate such failures.

6. Unless WT has received a waiver, a periodic review was conducted for the certification period in accordance with section 8.04 of the WT Agreement, and the results of such review are reported to the extent required in section 8.06 of the WT Agreement.

#### *B. Qualified Certification*

If the responsible officer has identified (1) an event of default or (2) a material failure that WT has not corrected as of the date of this certification, check the applicable statements to confirm:

1. The responsible officer (or designee) has identified an event of default, as defined in section 10.05 of the WT Agreement, or has determined that, as of the date of the certification, there are one or more material failures as defined in section 8.03(B) of the WT Agreement with respect to WT's compliance or the compliance of a partnership or trust to which WT applies the agency option and that appropriate actions will be taken to prevent such failures from reoccurring.
2. With respect to any failure to withhold, deposit, or report to the extent required under the WT Agreement, WT will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).
3. The responsible officer (or an officer of the partnership or trust to which WT applies the agency option if the partnership or trust performs its own periodic review) will respond to any notice of default (if applicable) or will provide (either directly or through WT) to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure.

#### *C. Amended Form 1042*

1. Did WT file an amended Form 1042 to report additional tax liability based on the results of the periodic review or the findings of any other procedure, process, or review under-

taken by the responsible officer in preparation for the certification of internal controls? Y/N

#### *D. Material Failures or Event of Default*

1. Did the responsible officer determine that as of the date of the periodic review report (or the date of completion of any other procedure, process, or review), there are no material failures with respect to WT's compliance with the WT Agreement? Y/N
2. Did the responsible officer determine that as of the date of the periodic review report (or the date of completion of any other procedure, process, or review), there are one or more material failures with respect to WT's compliance with the WT Agreement and that appropriate actions have been or will be taken to prevent such failures from reoccurring? Y/N
  - a. If yes, check the following material failures that were identified.
    - i. WT's establishment of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to WT's failure to comply with the WT Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.
    - ii. WT's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of WT to take actions consistent with WT's obligations under the WT Agreement.
    - iii. A criminal or civil penalty or sanction imposed on WT by a regulator or other governmental authority or agency with oversight over WT's compliance with AML/KYC procedures, if applicable, to which WT is

subject and that is imposed due to WT's failure to properly identify beneficiaries or owners under the requirements of those procedures.

iv. A finding (including a finding noted in the periodic review report described in section 8.06 of the WT Agreement) that, for one or more years covered by the WT Agreement, WT failed to:

1. Withhold an amount that WT was required to withhold under chapter 3 or 4 as required under section 3 of the WT Agreement;
2. Make deposits in the time and manner required by section 3.05 of the WT Agreement or make adequate deposits to satisfy its withholding obligations, taking into account the procedures under section 7 of the WT Agreement;
3. Report or report accurately on Forms 1042 or 1042-S as required under sections 6.01 and 6.02 of the WT Agreement;
4. Report or report accurately on Forms 8966 as required under section 6.05 of the WT Agreement; or
5. Report or report accurately on Form 3520-A and the Foreign Grantor Trust Owner Statements and Foreign Grantor Trust Beneficiary Statements as required under section 6.03 of the WT Agreement.

v. Other (include a detailed explanation).

3. The material failure(s) identified in the review has been corrected by the time of this certification. Y/N/NA

- a. If yes, describe the steps taken to correct the material failure.
- b. If no, describe the proposed steps to be taken to correct the material failure and the time frame for completing such steps.

4. Did any partnerships or trusts to which WT applies the agency option inform WT that it has had a material failure with respect to its obligations as described in the WT Agreement? Y/N/NA

- a. If yes, provide the name of the partnership or trust and, based on the information provided by the partnership or trust, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the timeframe for completing such steps.

5. An event of default as defined in section 10.05 of the WT Agreement has been identified. Y/N

- b. If yes, identify the event of default.
  - i. WT failed to implement adequate procedures, accounting systems, and internal controls to ensure compliance with the WT Agreement;
  - ii. WT underwithheld a material amount of tax that WT was required to withhold under chapter 3 or 4 and failed to correct the underwithholding or to file an amended Form 1042 reporting, and paying, the appropriate tax;
  - iii. WT made excessive refund claims;
  - iv. WT failed to file required Forms 1040NR (if required), 1042, 1042-S, 8966, 3520-A and the Foreign Grantor Trust Owner Statements and Foreign Grantor Trust

Beneficiary Statements by the due date specified on such forms or filed forms that are materially incorrect or fraudulent;

vi. If WT is an FFI, WT failed to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

vii. If WT is a sponsoring entity of a sponsored FFI or a sponsored direct reporting NFFE, WT failed to materially comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;

viii. WT failed to perform a periodic review when required or to document the findings of such review in a written report;

ix. WT failed to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects WT's obligations under the WT Agreement;

x. WT failed to cure a material failure identified in the qualified certification described in Part II.B of this Appendix or identified by the IRS;

xi. WT made any fraudulent statement or a misrepresentation of material fact with regard to the WT Agreement to the IRS, a withholding agent, or WT's reviewer;

xii. The IRS determined that WT's reviewer is not sufficiently independent, as described in the WT Agreement, to adequately perform its review function, and WT

- failed to arrange for a periodic review conducted by a reviewer approved by the IRS;
- xii. WT failed to make deposits in the time and manner required by section 3.05 of the WT Agreement or failed to make adequate deposits, taking into account the procedures of section 7.05 of the WT Agreement;
  - xiii. If applicable, WT failed to inform the IRS of any change in the applicable know-your-customer rules within 90 days of the change becoming effective when WT relied on documentary evidence as permitted in section 4.01(A) of the WT Agreement;
  - xiv. A partnership or trust to which WT applied the agency option was in default with the agency agreement and WT failed to terminate that agreement within the time period specified in section 9.02 of the WT Agreement;
  - xv. WT failed to materially comply with the requirements of a nonwithholding foreign trust under chapter 3 with respect to any beneficiary or owner for which WT does not act as a withholding foreign trust;
  - xvi. WT is not in possession of valid documentation described in sections 4.01 through 4.09 of the WT Agreement for each direct beneficiary or owner as of the due date of this certification; or
  - xvii. Other (please describe).

#### *E. Significant Change in Circumstances*

Check the applicable statements to confirm.

1. For the most recent certification period, the periodic review (or any other procedure, process, or review) has not identified any significant change in circumstances, as described in section 10.04(C) or (D) of the WT Agreement.
2. For the most recent certification period, the periodic review has identified the following significant change(s) in circumstances:
  - a. A significant change in WT's business practices that affects WT's ability to meet its obligations under the WT Agreement.
  - b. If applicable, a material change in the applicable know-your-customer rules and procedures when WT relied on documentary evidence as permitted in section 4.01(A) of the WT Agreement.
  - c. Other (please describe).
3. Describe any significant changes in circumstances identified in question 2.

#### *F. Chapter 4 Status*

1. Complete the applicable section (if any) and check the applicable statement to confirm.
  - a. If WT is a participating FFI:  
For the most recent certification period under its WT Agreement, WT has obtained (or maintained) status as a participating FFI and has made the following certification of compliance with respect to its FFI agreement for the most recent certification period under the FFI agreement (check one).  
*Note:* You may check Not Applicable if, during the certification period under the WT Agreement, your chapter 4 status changed from one of the other applicable chapter 4 statuses to participating FFI or if your certification of compliance under the FFI agreement

is not yet due as of the date of this certification.

- i. Certification of Effective Internal Controls
- ii. Qualified Certification
- iii. Not Applicable
- b. If WT is a registered deemed-compliant FFI:  
For the most recent certification period under its WT Agreement, WT has certified as required under § 1.1471-5(f)(1)(ii)(B) or Annex II of an applicable Model 2 IGA that it has satisfied the requirements of the deemed-compliant status claimed.
  - c. If WT is a registered deemed-compliant Model 1 IGA FFI:  
For the most recent certification period under its WT Agreement, WT has been resident in or organized under the laws of a jurisdiction that has in place a Model 1 IGA with the United States and has met the requirements under an applicable Model 1 IGA to be treated as a deemed-compliant FFI.
  - d. If WT is a retirement fund:  
For the most recent certification period under the WT Agreement, WT has been a retirement fund or other fund that is an exempt beneficial owner described in § 1.1471-6(f) or a similar fund that qualifies as an exempt beneficial owner under an applicable Model 1 IGA or Model 2 IGA.

#### **PART III. WAIVER OF PERIODIC REVIEW**

For purposes of this Part III, "beneficiary or owner" means, unless otherwise specified, any beneficiary or owner for which WT acts as a WT.

*For sections B.1 through 6 of this Part III, while the curing of inadequate documentation is permissible, the information re-*

ported in these sections must not reflect any remediation or curing.

In order to be eligible for a waiver, WT must be able to confirm all of the eligibility requirements in Section A are met.

**A. Eligibility for Waiver (check each statement to confirm)**

1. WT is an FFI.
2. WT is not part of a consolidated compliance program.
3. For each calendar year in the certification period, the reportable amounts received by WT do not exceed \$1 million.
4. WT timely filed its Forms 1042, 1042-S, 8966 (or, if WT is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to an applicable Model 1 IGA), and 3520-A, as applicable, for all years (fiscal or calendar) in the certification period.
5. WT made all periodic certifications and reviews required by sections 8.02 and 8.03 of the WT Agreement as well as any certifications required pursuant to WT's FATCA requirements as a participating FFI or registered deemed-compliant FFI.
6. WT made the certification of effective internal controls in Part II.A.

**B. Information required (provided for the most recent year in the certification period for which filing has been made by the time of this waiver request)**

1. The total number of beneficiaries or owners
  - a. Total number of direct beneficiaries or owners
    - i. Foreign persons
    - ii. U.S. persons
    - iii. Foreign intermediaries and flow-through entities
  - b. Total number of indirect beneficiaries or owners
    - i. Foreign persons
    - ii. U.S. persons
    - iii. Foreign intermediaries and flow-through entities
2. The total number of non-U.S. beneficiaries or owners that received reportable amounts

- a. The total number of such beneficiaries or owners that have valid documentation.
  - b. The total number of such beneficiaries or owners that have no documentation or invalid documentation.
3. The aggregate amount of reportable amounts received for non-U.S. beneficiaries or owners
  4. The total number of Forms 1042-S filed by WT.
  5. The total number of Schedules K-1 filed by WT.
  6. The aggregate amount of tax withheld under chapter 3.
  7. The aggregate amount of tax withheld under chapter 4.
  8. The aggregate amount of withheld tax deposited by WT.

**PART IV. PERIODIC REVIEW: WT FACTUAL INFORMATION**

This Part IV must be completed by all WTs that have not received a waiver. For purposes of this Part III, "beneficiary or owner" means, unless otherwise specified, any direct or indirect beneficiary or owner for which WT acts as a withholding foreign trust.

*For Sections B through G of this Part III, while the curing of inadequate documentation is permissible, unless otherwise indicated, the information reported shall be based on the review and not results obtained after curing.*

**A. General Information**

1. Did WT use an external reviewer to conduct any portion of its periodic review? Y/N
  - a. If yes, provide the name(s) of reviewer(s) and the name and address of the firm at which the reviewer is employed.
2. Did WT use an internal reviewer to conduct any portion of its periodic review? Y/N
  - a. If yes, provide a brief description of the internal reviewer, such as their department and other roles and responsibilities with respect to the WT's WT activities.
3. Calendar year reviewed for periodic review.

*Caution: On the due date for reporting the factual information relating to the periodic review (provided in section 8.04 of the WT Agreement), there must be 15 or more months available on the statutory period for assessment for taxes reportable on Form 1042 of the calendar year for which the review was conducted or the WT must submit, upon request by the IRS, a Form 872, "Consent to Extend the Time to Assess Tax," that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 11.06 of the WT Agreement.*

**B. General Information on Beneficiaries or Owners and Review of Beneficiaries or Owners**

1. Total beneficiaries or owners reviewed for periodic review.

*Note: WT must review all beneficiaries or owners that received a distribution of, or included in their distributive share, a reportable amount that is attributable to an amount paid to WT in the year under review.*

**C. Documentation**

1. Total beneficiaries or owners reviewed that are direct beneficiaries or owners.
2. Total beneficiaries or owners reviewed that are indirect beneficiaries or owners.
3. Total beneficiaries or owners reviewed with valid documentation.
4. Total beneficiaries or owners reviewed with invalid documentation or no documentation.
5. Total beneficiaries or owners reviewed with invalid documentation or no documentation for which valid documentation or additional valid documentation was obtained after the review.
6. Total direct beneficiaries or owners reviewed for which WT had no documentation at any time that withholding or reporting was required under section 3.02 of the WT Agreement.
7. Total direct beneficiaries or owners in question 6 for which valid documentation (that relates to the time withholding or reporting was re-

quired) was obtained by WT for each such undocumented direct beneficiary or owner before March 15 of the year following the year in which the WT Agreement was automatically terminated under section 10.03(A) of the WT Agreement.

8. Total beneficiaries or owners reviewed for which treaty benefits were claimed.
9. Total beneficiaries or owners reviewed for which treaty benefits were claimed where WT did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 4.03(B) of the WT Agreement).
10. Total beneficiaries or owners reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable Model 1 IGA) for chapter 4 purposes.
11. Total beneficiaries or owners reviewed that are U.S. accounts for chapter 4 purposes (or U.S. reportable accounts under an applicable Model 1 IGA) for which WT has obtained valid documentation.
12. If WT is an NFFE, total beneficiaries or owners reviewed that are passive NFFEs with substantial U.S. owners.

#### D. Withholding

1. The aggregate amount reported as withheld under chapter 3 by WT on Forms 1042-S.
2. Number of beneficiaries or owners for which amounts were withheld under chapter 3 (excluding beneficiaries or owners reported in question 10(a) or 11(a) below).
3. The aggregate amount reported as withheld under chapter 4 by WT on Forms 1042-S.
4. Number of beneficiaries or owners for which amounts were withheld under chapter 4 (excluding beneficiaries or owners reported in question 10(a) or 11(a) below).
5. The aggregate amount reported as withheld by WT on Form 1042 under chapter 3 or 4.

6. Additional withholding required under chapter 4 based on the results of the periodic review (excluding withholding reported in question 10(d) or 11(d) below).
7. Additional withholding required under chapter 3 based on the results of the periodic review (excluding withholding reported in question 10(d) or 11(d) below).
8. The aggregate amount of deposits made by WT in accordance with section 3.05 of the WT Agreement.
9. The aggregate amount withheld by WT but not timely deposited.
10. Number of partnerships or trusts to which the joint account option of section 9.01 of the WT Agreement was applied (if applicable).
  - a. Total partners, beneficiaries, or owners of a partnership or trust to which the joint account option applied for which appropriate documentation was obtained and the appropriate rate of withholding was applied.
  - b. Total partners, beneficiaries, or owners of a partnership or trust to which the joint account option applied for which appropriate documentation was obtained and the appropriate rate of withholding was not applied.
  - c. Total partners, beneficiaries, or owners of a partnership or trust to which the joint account option applied for which appropriate documentation was not obtained and the appropriate rate of withholding was not applied.
  - d. Aggregate amount of underwithholding resulting from the appropriate rate of withholding not being applied with respect to a partner, beneficiary, or owner of a partnership or trust to which the joint account option applied.
11. Number of partnerships or trusts to which the agency option of section 9.02 of the WT Agreement was applied (if WT includes the partnership or trust in WT's periodic review).

- a. Total partners, beneficiaries, or owners of a partnership or trust to which the agency option applied for which appropriate documentation was obtained and the appropriate rate of withholding was applied.
- b. Total partners, beneficiaries, or owners of a partnership or trust to which the agency option applied for which appropriate documentation was obtained and the appropriate rate of withholding was not applied.
- c. Total partners, beneficiaries, or owners of a partnership or trust to which the agency option applied for which appropriate documentation was not obtained and the appropriate rate of withholding was not applied.
- d. Aggregate amount of underwithholding resulting from the appropriate rate of withholding not being applied with respect to a partner, beneficiary, or owner of a partnership or trust to which the agency option applied.

#### E. Reconciliation of Amounts Reported on Forms 1042-S

1. The aggregate amount reported paid to WT during the year under review on all Forms 1042-S issued to WT (acting as a withholding foreign trust).
2. The aggregate amount reported by WT on Forms 1042-S as distributed to, or included in the distributive share of, beneficiaries or owners that are included in WT's chapter 4 reporting pools (other than the U.S. payee pool) (including a chapter 4 reporting pool of a partnership or trust to which WT applies the agency option) to the extent such amount is attributable to an amount paid to WT in the year under review.
3. The aggregate amount reported by WT on Forms 1042-S as distributed to, or included in the distributive share of, WT's chapter 4 reporting pool- U.S. payee pool to the

extent such amount is attributable to an amount paid to WT in the year under review.

4. If WT made a pooled reporting election under section 6.02(D) of the WT Agreement, the aggregate amount reported by WT on Forms 1042-S as distributed to, or included in the distributive share of, WT's chapter 3 reporting pools (including chapter 3 reporting pools of a partnership or trust to which WT applies the joint account or agency option) to the extent such amount is attributable to an amount paid to WT in the year under review.
5. If WT did not make a pooled reporting election, the aggregate amount of reported by WT on Forms 1042-S as distributed to, or included in the distributive share of, each direct beneficiary or owner (other than a passthrough beneficiary or owner) (not included in question 2 or 3 above) to the extent such amount is attributable to an amount paid to WT in the year under review (excluding an amount reported in question 6 below).
6. The aggregate amount reported by WT on Forms 1042-S as distributed to, or included in the distributive share of, other WTs, WT's, and QIs as a class to the extent such amount is attributable to an amount paid to WT in the year under review.
7. The aggregate amount reported by WT on Forms 1042-S as distributed to, or included in the distributive share of, participating FFIs, registered deemed-compliant FFIs, and registered deemed-compliant Model 1 IGA FFIs that are pass-through beneficiaries or owners to which WT applies section 9.03 of the WT Agreement as a class with respect to their chapter 4 reporting pools to the extent such amount is attributable to an amount paid to WT in the year under review (excluding amounts included in question 6 above).
8. The aggregate amount reported by WT on Forms 1042-S as distributed to, or included in the distributive share of, indirect beneficiaries

or owners (not included in any of the questions above) to which WT applies section 9.03 of the WT Agreement to the extent such amount is attributable to an amount paid to WT in the year under review.

9. The aggregate amount subject to chapter 3 withholding that WT distributed to, or included in the distributive share of, U.S. beneficiaries or owners not included in a chapter 4 withholding rate pool to the extent such amount is attributable to an amount paid to WT in the year under review.
10. The aggregate amount distributed to, or included in the distributive share of, direct beneficiaries or owners of WT (including partners, beneficiaries, or owners of a partnership or trust to which WT applies the joint account or agency option) that requested individual Form(s) 1042-S and direct beneficiaries or owners that were issued Forms 1042-S under section 6.02(B)(8) of the WT Agreement (excluding an amount reported in question 4 above).
11. Total of questions 2 through 10.
12. The amount of any unreconciled variances (if question 1 minus question 11 is other than 0).
13. The aggregate amount reported by WT on Form 1042 as distributed to, or included in the distributive share of, beneficiaries or owners of WT to the extent such amount is attributable to an amount paid to WT in the year under review.
14. The amount of any unreconciled variances of amounts reported by WT on Forms 1042 and 1042-S (question 13 minus the total of questions 2 through 8).
15. The aggregate amount of any collective claims for refund or credit made by WT.

#### *F. Reporting of Reportable Amounts Other Than Amounts Subject to Chapter 3 Withholding*

1. The aggregate amount of reportable amounts other than amounts subject to chapter 3 withholding received by WT.

2. The aggregate amount of reportable amounts other than amounts subject to chapter 3 withholding distributed to, or included in the distributive share of, a direct beneficiary or owner that is a U.S. person.
3. Number of direct beneficiaries or owners that are U.S. persons that are not reported on Form 3520-A or as otherwise required under the WT Agreement (if none enter 0).

#### *G. Reporting on Form 3520-A*

1. The number of Foreign Grantor Trust Owner Statements filed with WT's Form 3520-A.
2. The number of Foreign Grantor Trust Beneficiary Statements filed with WT's Form 3520-A.

### **SECTION 8. EFFECTIVE DATE**

The effective date of this revenue procedure is January 19, 2017. The effective dates of the agreements described in sections 6 and 7 of this revenue procedure are described in sections 6 and 7 of this revenue procedure.

### **SECTION 9. EFFECT ON OTHER DOCUMENTS**

Revenue Procedure 2014-47, 2014-35 I.R.B. 393, is modified and superseded.

### **SECTION 10. PAPERWORK REDUCTION ACT**

This revenue procedure refers to a collection of information in the following sections of this revenue procedure: (1) section 5, regarding the application procedures for WP and WT status and withholding agreements; (2) section 6, regarding the WP agreement; and (3) section 7, regarding the WT agreement.

This revenue procedure refers to a collection of information in the following sections of the WP agreement (set forth in section 6 of this revenue procedure): section 3 regarding withholding requirements; section 4 regarding the due diligence requirements for partner identification and documentation; section 5 regarding the withholding foreign partnership withholding certificate; section 6 regarding tax return and information reporting obligations; section 7 regarding

adjustments for overwithholding and underwithholding and refunds; section 8 regarding compliance procedures; and section 9 regarding simplified joint account and indirect partner documentation, withholding, and reporting procedures and the appointment of an agent to apply the WP agreement on WP's behalf.

This revenue procedure also refers to a collection of information in the following sections of the WT agreement (set forth in section 7 of this revenue procedure): section 3 regarding withholding requirements; section 4 regarding the due diligence requirements for beneficiary or owner identification and documentation; section 5 regarding the withholding foreign trust withholding certificate; section 6 regarding tax return and information reporting obligations; section 7 regarding adjustments for overwithholding and underwithholding and refunds; section 8 regarding compliance procedures; and section 9 regarding simplified joint account and indirect beneficiary or owner documentation, withholding, and reporting procedures and the appointment of an agent to apply the WT agreement on WT's behalf.

Responses to these collections of information will be used to enable the IRS to determine whether to enter into a withholding agreement with a WP or WT applicant, to renew an existing WP or WT agreement, and to verify a WP's or WT's compliance with its applicable withholding agreement. 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 various IRS forms including Forms 8957, 14345, W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, W-9, 1042, 1042-S, 1065, 1099, 3520-A, and 8966. The information collection burden relating to the section 8 compliance procedures for both the WP and WT agreements is reflected in the Appendices to the WP and WT agreements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless 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 11. DRAFTING INFORMATION**

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

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## **Rev. Proc. 2017-22**

### **SECTION 1. PURPOSE**

This revenue procedure clarifies that the safe harbor provided in Rev. Proc. 2010-46, 2010-49 I.R.B. 814, applies to any Transportation Investment Generating Economic Recovery grants (TIGER Discretionary Grants) for capital investments in surface transportation infrastructure made by the Department of Transportation (DOT) pursuant to legislative authorizations of these grants made after the publication of Rev. Proc. 2010-46.

### **SECTION 2. BACKGROUND**

Section 118(a) of the Internal Revenue Code provides that in the case of a corporation, gross income does not include a contribution to the capital of the taxpayer. Section 1.118-1 of the Income Tax Regulations provides that § 118 applies to contributions to capital made by a person other than a shareholder, for example, contributions of property to a corporation by a governmental unit for the purpose of enabling the corporation to expand its operating facilities.

Section 362(c)(2) requires a basis reduction in a corporation's property when the corporation receives money from a nonshareholder as a contribution to its capital.

Rev. Proc. 2010-46, in part, provides a safe harbor under § 118(a) for certain

grant amounts received by corporate taxpayers engaged in a transportation trade or business for capital investments in surface transportation infrastructure under (1) the Supplemental Discretionary Grants for Capital Investments in Surface Transportation Infrastructure (TIGER I Discretionary Grants) program as authorized by Title XII, Division A of ARRA; or (2) the National Infrastructure Investments (TIGER II Discretionary Grants) program as authorized by the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (Title I, Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117)).

In 2009, the Office of the Secretary of Transportation issued a Notice of Funding Availability (NOFA), 74 FR 28755, that provides guidance on TIGER I Discretionary Grants. The grants must be for capital investments in surface transportation infrastructure. In 2010, the Office of the Secretary of Transportation issued a NOFA, 75 FR 30460, that provides guidance on TIGER II Discretionary Grants. The grants must be for capital investments in surface transportation infrastructure. The 2010 NOFA contemplates that some funds may be used to fund the planning, preparation, or design of projects (TIGER II Planning Grants). DOT has issued additional NOFAs and Notices of Funding Opportunity (NOFOs) as legislation enacted subsequent to the publication of Rev. Proc. 2010-46 has provided further appropriations for TIGER Discretionary Grants awarded by DOT.

### **SECTION 3. SCOPE**

This revenue procedure clarifies that the safe harbor of Rev. Proc. 2010-46 applies to corporate taxpayers engaged in a transportation trade or business that receive grant amounts for the costs of capital investments in surface transportation infrastructure under any TIGER Discretionary Grants, including those authorized in each year following those described in Rev. Proc. 2010-46 as well as any to be authorized in the future. In no case will this revenue procedure apply to amounts received to pay the subsidy and administrative costs of the Transportation Infrastructure Finance and Innovation Act of

1998 or to amounts received for any TIGER planning grants.

Further, this revenue procedure does not apply to noncorporate taxpayers.

#### **SECTION 4. PROCEDURE**

The Internal Revenue Service will not challenge a corporate taxpayer's treatment of grant amounts received by the corporation under any TIGER Discretionary Grants for capital investments in surface transportation infrastructure as a non-shareholder contribution to the capital of the corporation under § 118(a) if the cor-

poration properly reduces the basis of its property under § 362(c)(2) and the regulations thereunder. For purposes of this revenue procedure, TIGER Discretionary Grants include those TIGER Discretionary Grants authorized in each year following those described in Rev. Proc. 2010-46 as well as any to be authorized in the future.

#### **SECTION 5. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 2010-46, 2010-49 I.R.B. 814, is clarified.

#### **SECTION 6. DRAFTING INFORMATION**

The principal author of this revenue procedure is David McDonnell of the Office of Associate Chief Counsel (Pass-throughs & Special Industries). For further information regarding this revenue procedure, contact Mr. McDonnell at (202) 317-4137 (not a toll-free number).

## Part IV. Items of General Interest

### Definitions of Qualified Matching Contributions and Qualified Nonelective Contributions

#### REG-131643-15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the definitions of qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs) under regulations relating to certain qualified retirement plans that contain cash or deferred arrangements under section 401(k) or that provide for matching contributions or employee contributions under section 401(m). Under these regulations, employer contributions to a plan would be able to qualify as QMACs or QNECs if they satisfy applicable nonforfeitable and distribution requirements at the time they are allocated to participants' accounts, but need not meet these requirements when they are contributed to the plan. These regulations would affect participants in, beneficiaries of, employers maintaining, and administrators of tax-qualified plans that contain cash or deferred arrangements or provide for matching contributions or employee contributions.

DATES: Comments and requests for a public hearing must be received by April 18, 2017.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-131643-15) Room 5203, 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-131643-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-131643-15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regula-

tions, Rosemary Y. Oluwo at (202) 317-4148; concerning submissions of comments or to request a hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 401(k)(1) provides that a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as failing to satisfy the requirements of section 401(a) merely because the plan includes a qualified cash or deferred arrangement (CODA). To be considered a qualified CODA, a plan must satisfy several requirements, including: (i) under section 401(k)(2)(B), amounts held by the plan's trust that are attributable to employer contributions made pursuant to an employee's election must satisfy certain distribution requirements; (ii) under section 401(k)(2)(C), an employee's right to such employer contributions must be nonforfeitable; and (iii) under section 401(k)(3), such employer contributions must satisfy certain nondiscrimination requirements.

Under section 401(k)(3)(D)(ii), the employer contributions taken into account for purposes of applying the nondiscrimination requirements may, under such rules as the Secretary may provide and at the election of the employer, include, in addition to contributions made pursuant to an employee's election, matching contributions that meet the distribution and nonforfeitable requirements of section 401(k)(2)(B) and (C) and qualified nonelective contributions within the meaning of section 401(m)(4)(C). Under section 401(m)(4)(C), a qualified nonelective contribution is an employer contribution, other than a matching contribution, with respect to which the distribution and nonforfeitable requirements of section 401(k)(2)(B) and (C) are met.

Under § 1.401(k)-1(b)(1)(ii), a CODA satisfies the applicable nondiscrimination requirements if it satisfies the actual deferral percentage (ADP) test of section 401(k)(3), described in § 1.401(k)-2. The ADP test limits the degree of disparity permitted between the percentage of com-

penensation made as employer contributions to the plan for a plan year on behalf of eligible highly compensated employees and the percentage of compensation made as employer contributions on behalf of eligible nonhighly compensated employees. If the ADP test limits are exceeded, the employer must take corrective action to ensure that the limits are met. In determining the amount of employer contributions made on behalf of an eligible employee, employers are allowed to take into account certain qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs) made on behalf of the employee by the employer.

In lieu of applying the ADP test, an employer may choose to design its plan to satisfy an ADP safe harbor, including the ADP safe harbor provisions of section 401(k)(12), described in § 1.401(k)-3. Under § 1.401(k)-3, a plan satisfies the ADP safe harbor provisions of section 401(k)(12) if, among other things, it satisfies certain contribution requirements. With respect to the safe harbor under section 401(k)(12), an employer may choose to satisfy the contribution requirement by providing a certain level of QMACs or QNECs to eligible nonhighly compensated employees under the plan.

A defined contribution plan that provides for matching or employee after-tax contributions must satisfy the nondiscrimination requirements under section 401(m) with respect to those contributions for any plan year. Under § 1.401(m)-1(b)(1), the matching contributions and employee contributions under a plan satisfy the nondiscrimination requirements for a plan year if the plan satisfies the actual contribution percentage (ACP) test of section 401(m)(2) described in § 1.401(m)-2.

The ACP test limits the degree of disparity permitted between the percentage of compensation made as matching contributions and after-tax employee contributions for or by eligible highly compensated employees under the plan and the percentage of compensation made as matching contributions and after-tax employee contributions for or by eligible nonhighly compensated employees under the plan. If the ACP test limits are exceeded, the employer must take corrective

action to ensure that the limits are met. In determining the amount of employer contributions made on behalf of an eligible employee, employers are allowed to take into account certain QNECs made on behalf of the employee by the employer. Employers must also take into account QMACs made on behalf of the employee by the employer unless an exclusion applies (including an exclusion for QMACs that are taken into account under the ADP test).

If an employer designs its plan to satisfy the ADP safe harbor of section 401(k)(12), it may avoid performing the ACP test with respect to matching contributions under the plan, as long as the additional requirements of the ACP safe harbor of section 401(m)(11) are met.

Under § 1.401(k)-6, QMACs and QNECs are matching contributions and employer contributions (other than elective or matching contributions) that satisfy the nonforfeitable requirements of § 1.401(k)-1(c) and the distribution requirements of § 1.401(k)-1(d) “when they are contributed to the plan.” Similarly, § 1.401(m)-5 includes independent definitions of QMACs and QNECs, which are matching contributions and employer contributions (other than elective or matching contributions) that satisfy the nonforfeitable and distribution requirements of § 1.401(k)-1(c) and (d) “at the time the contribution is made.”

The Treasury Department and the IRS have received comments with respect to the definitions of QMACs and QNECs in §§ 1.401(k)-6 and 1.401(m)-5. In particular, commenters assert that employer contributions should be able to qualify as QMACs and QNECs as long as they satisfy applicable nonforfeitable and distribution requirements at the time they are allocated to participants’ accounts, rather than when they are first contributed to the plan. Commenters contend that interpreting sections 401(k)(3)(D)(ii) and 401(m)(4)(C) to require satisfaction of applicable nonforfeitable and distribution requirements at the time amounts are first contributed to the plan would preclude plan sponsors with plans that permit the use of amounts in plan forfeiture accounts to offset future employer contributions under the plan from applying such amounts to fund QMACs and QNECs. This is because the amounts would have been allo-

cated to the forfeiture accounts only after a participant incurred a forfeiture of benefits and, thus, generally would have been subject to a vesting schedule when they were first contributed to the plan. Commenters have requested that QMAC and QNEC requirements not be interpreted to prevent the use of plan forfeitures to fund QMACs and QNECs. The commenters urge that the nonforfeitable and distribution requirements under § 1.401(k)-6 should apply when QMACs and QNECs are allocated to participants’ accounts and not when the contributions are first made to the plan.

### Explanation of Provisions

After consideration of the comments described in this preamble in the “**Background**” section, the Treasury Department and the IRS are proposing to amend § 1.401(k)-6 to provide that amounts used to fund QMACs and QNECs must be nonforfeitable and subject to distribution restrictions in accordance with § 1.401(k)-1(c) and (d) when allocated to participants’ accounts, and to no longer require that amounts used to fund QMACs and QNECs satisfy the nonforfeitable and distribution requirements when they are first contributed to the plan. Treasury and IRS note that while the second sentence of each of the current definitions of QMACs and QNECs refers to the “vesting” requirements of § 1.401(k)-1(c), those requirements are more appropriately characterized as “nonforfeitable” requirements consistent with section 401(k)(2)(C) and the title of § 1.401(k)-1(c). Accordingly, these proposed regulations would amend these definitions to clarify those references by replacing the word “vesting” with “nonforfeitable” in each definition; these changes are not otherwise intended to have any substantive impact on this or any other section of the regulations. These proposed regulations would also amend the definitions of QMACs and QNECs in § 1.401(m)-5 to provide cross-references to the definitions of QMACs and QNECs under § 1.401(k)-6. These amendments to § 1.401(m)-5 are being made to ensure a consistent definition of QMACs and QNECs in § 1.401(k)-6 and § 1.401(m)-5 (including the requirement that amounts used to fund QMACs and QNECs be made subject to nonforfeitable and dis-

tribution requirements when they are allocated to participants’ accounts as QMACs or QNECs) and are not otherwise intended to have any substantive impact on this or any other section of the regulations.

### Proposed Effective/Applicability Date

These regulations are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. Taxpayers, however, may rely on these proposed regulations for periods preceding the proposed applicability date. If, and to the extent, the final regulations are more restrictive than the rules in these proposed regulations, those provisions of the final regulations will be applied without retroactive effect.

### Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “ADDRESSES” heading. Treasury and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits 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 author of these regulations is Rosemary Y. Oluwo, Office of Associate Chief Counsel (Tax Exempt and Governmental Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

\* \* \* \* \*

## 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 continues to read in part as follows: Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.401(k)-1 is amended by adding paragraph (g)(5) to read as follows:

*§ 1.401(k)-1 Certain cash or deferred arrangements.*

\* \* \* \* \*

(g) \* \* \*

(5) *Effective date for definitions of qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs).* The revisions to the second sentence in the definitions of QMACs and QNECs in § 1.401(k)-6 apply to taxable years ending on or after the date of publication of the

Treasury decision adopting these rules as final regulations in the Federal Register.

Par. 3. Section 1.401(k)-6 is amended by revising the second sentence in the definitions of *Qualified matching contributions (QMACs)* and *Qualified nonelective contributions (QNECs)* to read as follows:

*§ 1.401(k)-6 Definitions.*

\* \* \* \* \*

*Qualified matching contributions (QMACs).* \* \* \* Thus, the matching contributions must satisfy the nonforfeitability requirements of § 1.401(k)-1(c) and be subject to the distribution requirements of § 1.401(k)-1(d) when they are allocated to participants' accounts. \* \* \*

*Qualified nonelective contributions (QNECs).* \* \* \* Thus, the nonelective contributions must satisfy the nonforfeitability requirements of § 1.401(k)-1(c) and be subject to the distribution requirements of § 1.401(k)-1(d) when they are allocated to participants' accounts. \* \* \*

Par. 4. Section 1.401(m)-1 is amended by adding paragraph (d)(4) to read as follows:

*§ 1.401(m)-1 Employee contributions and matching contributions.\* \* \* \* \**

(d) \* \* \*

(4) *Effective date for definitions of qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs).* The revisions to the definitions of QMACs and QNECs in § 1.401(m)-5 apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 1.401(m)-5 is amended by revising the definitions of *Qualified matching contributions (QMACs)* and *Qualified nonelective contributions (QNECs)* to read as follows:

*§ 1.401(m)-5 Definitions.*

\* \* \* \* \*

*Qualified matching contributions (QMACs).* *Qualified matching contributions or QMACs* means qualified matching contributions or QMACs as defined in § 1.401(k)-6.

*Qualified nonelective contributions (QNECs).* *Qualified nonelective contributions or QNECs* means qualified nonelective contributions or QNECs as defined in § 1.401(k)-6.

John Dalrymple,  
Deputy Commissioner for  
Services and Enforcement.

(Filed by the Office of the Federal Register on January 17, 2017, 8:45 a.m., and published in the issue of the Federal Register for January 18, 2017, 82 F.R. 5477)

# Definition of Terms

*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:*

*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 determinative 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 sub-

stance 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.

## 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 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

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## **We Welcome Comments About the Internal Revenue Bulletin**

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