

trust or foreign simple trust that has executed the agreement described in § 1.1441-5(e)(5)(v).

(c) *Applicability date.* This section generally applies beginning on January 6, 2017, except for paragraphs (b)(116) and (121) of this section, which apply beginning on March 25, 2019. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that otherwise apply beginning on January 6, 2017, and before March 25, 2019, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2018. For rules that otherwise apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

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§ 1.1471-2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) *Requirement to withhold on payments to FFIs*—(1) *General rule of withholding.* Under section 1471(a), notwithstanding any exemption from withholding under any other provision of the Code or regulations, a withholding agent must withhold 30 percent of any withholdable payment made after June 30, 2014, to a payee that is an FFI unless either the withholding agent can reliably associate the payment with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under paragraph (a)(4) of this section or the payment is made under a grandfathered obligation that is described in paragraph (b) of this section or constitutes gross proceeds from the disposition of such an obligation. A withholding agent that is making a payment must determine who the payee is under § 1.1471-3(a) with respect to that payment and the chapter 4 status of such payee. See § 1.1471-3 for requirements for determining the chapter 4 status of a payee, including additional documentation requirements that apply when a payment is made to an intermediary or flow-through entity that is not the payee. Withholding under this

section applies without regard to whether the payee receives a withholdable payment as a beneficial owner or as an intermediary. See paragraph (a)(2)(iv) of this section for a description of the withholding requirements imposed on territory financial institutions as withholding agents under chapter 4. In the case of a withholdable payment to a NFFE, a withholding agent is required to determine whether withholding applies under section 1472 and § 1.1472-1. Except as otherwise provided in the regulations under chapter 4, a withholding obligation arises on the date a payment is made, as determined under § 1.1473-1(a).

(2) *Special withholding rules*—(i) *Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs, and U.S. branches acting as intermediaries.* A withholding agent that, after June 30, 2014, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a NWP or NWT, must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in § 1.1471-3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of § 1.1471-3(d)(4) and a withholding statement that meets the requirements of § 1.1471-3(c)(3)(iii)(B) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. Further, a withholding agent is not required to withhold on a payment that it can reliably associate with documentation indicating that the payee is a U.S. branch treated as a U.S. person (as defined in § 1.1471-1(b)(135)) or is a U.S. branch of an FFI that is not treated as a U.S. person but that applies the rules described in § 1.1471-4(d)(2)(iii)(C). See also § 1.1471-3(c)(3)(iii)(H) for the rules for valid documentation of a U.S. branch.

(ii) *Residual withholding responsibility of intermediaries and flow-through entities.* An intermediary or flow-through entity that receives a withholdable payment after June 30, 2014, is required to withhold on such payment to the extent required under chapter 4. Notwithstanding the previous sentence, an intermediary or flow-through entity is not required to withhold if another withholding agent has withheld the full amount required. Further, an NQI, NWP, or NWT is not required to withhold with respect to a withholdable payment under chapter 4 if it has provided a valid intermediary withholding certificate or flow-through withholding certificate and all of the information required by § 1.1471-3(c)(3)(iii), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount. A QI's, WP's, or WT's obligation to withhold and report is determined in accordance with its QI agreement, WP agreement, or WT agreement.

(iii) *Requirement to withhold if a participating FFI or registered deemed-compliant FFI makes an election to be withheld upon.* A person that otherwise would be a payee with respect to a payment but that makes an election to be withheld upon does not agree to accept primary withholding responsibility for the payment under chapter 3 or 4. Accordingly, such person cannot be treated as the payee and the withholding agent must determine whether it must withhold based on the chapter 4 status of the payee on whose behalf the person is receiving the payment. The election to be withheld upon is only available to the extent provided in paragraph (a)(2)(iii)(A) and (B) of this section. The election is not available to an entity that is required to accept primary withholding responsibility for the payment, such as a WP or WT receiving a payment of U.S. source FDAP income, or an entity that already must be withheld upon because it may not accept primary withholding responsibility for the payment and, as such, already must pass up documentation with respect to the payee to the withholding agent, such as a participating FFI that is an NQI receiving a payment of U.S. source FDAP income.

(A) *Election to be withheld upon for U.S. source FDAP income.* A withholding agent is required to withhold with respect to a payment, or portion of a payment, that is U.S. source FDAP income subject to withholding that is made after June 30, 2014, to a QI that has elected in accordance with this paragraph to be withheld upon, unless such withholding agent also makes an election to be withheld upon under this paragraph (a)(2)(iii)(A) or is an FFI that may not accept primary withholding responsibility for the payment. In such case, the withholding agent must withhold 30 percent of the portion of the payment that is allocable, pursuant to a withholding statement described in § 1.1471-3(c)(3)(iii)(B) provided by the QI, to recalcitrant account holders and nonparticipating FFIs. If no such allocation information is provided, the withholding agent must apply the presumption rules of § 1.1471-3(f) to determine the chapter 4 status of the payee. A QI that is an FFI and that makes the election to be withheld upon with respect to a payment of U.S. source FDAP income may not assume primary withholding responsibility under chapter 3 for that payment. Conversely, a QI that is an FFI and that does not make the election to be withheld upon with respect to a payment of U.S. source FDAP income is required to assume primary withholding responsibility under chapter 3 for that payment. The election to be withheld upon is only available with respect to a payment of U.S. source FDAP income if—

(1) The withholding agent is a participating FFI, reporting Model 1 FFI, QI, or a U.S. withholding agent;

(2) The person who receives the payment is a participating FFI or registered deemed-compliant FFI that acts as a QI with respect to the payment;

(3) The person who receives the payment provides the withholding agent, at or before the time of the payment, with a valid intermediary withholding certificate with respect to the payment that notifies the withholding agent that it has elected to be withheld upon, certifies that it is not assuming primary withholding responsibility under chapter 3, and designates whether such election is made for all accounts held

with the withholding agent or for the specific accounts identified on the withholding certificate; and

(4) The intermediary withholding certificate is accompanied by a withholding statement described in § 1.1471-3(c)(3)(iii)(B).

(B) *Election to be withheld upon for gross proceeds.* [Reserved]

(iv) *Withholding obligation of a territory financial institution.* A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment has an obligation to withhold (to the extent required under this section and § 1.1472-1(b)) if it agrees to be treated as a U.S. person with respect to the payment for purposes of both chapter 4 and § 1.1441-1(b)(2)(iv)(A). A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment is not required to withhold under paragraph (a)(1) of this section or § 1.1472-1(b), however, if it has provided the withholding agent that is a U.S. withholding agent, participating FFI, reporting Model 1 FFI, or QI with all of the documentation described in § 1.1471-3(c)(3)(iii) (in which it has not agreed to be treated as a U.S. person with respect to the payment), and it does not know, or have reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1474-1(d).

(v) *Withholding obligation of a foreign branch of a U.S. financial institution.* A foreign branch of a U.S. financial institution is a U.S. withholding agent and a payee that is a U.S. person, and is generally not an FFI. However, a foreign branch of a U.S. financial institution that is also a reporting Model 1 FFI is both a withholding agent and a registered deemed-compliant FFI. Additionally, a QI branch of a U.S. financial institution is both a withholding agent and either a participating FFI or a registered deemed-compliant FFI. Therefore, a foreign branch of a U.S. financial institution is not subject to withholding under chapter 4 but has an obligation to withhold under this section and § 1.1472-1 and may be liable for the tax if it fails to do so. See § 1.1471-2(a) (requirement to withhold on pay-

ments to FFIs) and § 1.1471-3(a)(3)(iii) (U.S. intermediary or agent of a foreign person). A foreign branch that is a reporting Model 1 FFI or a reporting Model 2 FFI may apply the procedures under Annex I of an applicable IGA to document the chapter 4 status of a payee of a withholdable payment that is a holder of an account maintained by the branch in the Model 1 or Model 2 IGA jurisdiction. A QI branch of a U.S. financial institution must withhold in accordance with this chapter as provided in the QI agreement in addition to meeting its obligations under either § 1.1471-4(b) and its FFI agreement or § 1.1471-5(f).

(vi) *Payments of gross proceeds.* [Reserved]

(3) *Coordination of withholding under sections 1471(a) and (b).* The following entities are deemed to satisfy their withholding obligations under section 1471(a) and this section: participating FFIs that comply with the withholding requirements of § 1.1471-4(b); exempt beneficial owners; section 501(c) entities described in § 1.1471-5(e)(5)(v); and nonprofit organizations described in § 1.1471-5(e)(5)(vi). See § 1.1471-5(f) for when a deemed-compliant FFI is deemed to satisfy its withholding obligations under section 1471(a) and this section.

(4) *Payments for which no withholding is required.* A withholding agent that has determined, in accordance with the documentation requirements and other rules provided in § 1.1471-3, that the payee of a withholdable payment is a foreign entity must determine whether the payment is exempt from withholding. Paragraphs (a)(4)(i) through (viii) of this section describe the circumstances in which a withholdable payment is not subject to withholding under section 1471(a) and this section.

(i) *Exception to withholding if the withholding agent lacks control, custody, or knowledge—(A) In general.* A withholding agent that is not related to the payee or beneficial owner has an obligation to withhold under chapter 4 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (a)(4)(i)) and the due date for filing the return on Form 1042 (including extensions) for the year

in which the payment occurs, it has control over or custody of money or property owned by the payee or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. The exemption from the obligation to withhold under this paragraph (a)(4)(i) does not apply, however, to payments with respect to stock or other securities or if the lack of control or custody of money or property from which to withhold is part of a pre-arranged plan known to the withholding agent to avoid withholding under section 1471 or 1472. A withholding agent does not lack control over money or property for purposes of this paragraph (a)(4)(i) if the withholding agent directs another party to make the payment. Thus, for example, a principal does not cease to have control over a payment when it contracts with a paying agent to make the payments to its account holders in lieu of paying the account holders directly. Further, a withholding agent does not lack knowledge of the facts that give rise to a payment merely because the withholding agent does not know the character or source of the payment for U.S. tax purposes. See paragraph (a)(5) of this section for rules addressing a withholding agent's obligations when the withholding agent has knowledge of the facts that give rise to the payment, but the character or source of the payment is not known. For purposes of this paragraph (a)(4)(i), a withholding agent is related to the payee or beneficial owner if it is related within the meaning of section 482. Any exemption from withholding pursuant to this paragraph (a)(4)(i) applies without a requirement that documentation be furnished to the withholding agent. The special rules set forth in § 1.1441-2(d)(2) through (4), regarding the obligation of a withholding agent with respect to cancellation of debt, the satisfaction of a tax liability following underwithholding by a withholding agent, and amounts described in § 1.860G-3(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest) also apply for purposes of chapter 4.

(B) *Example.* A, an individual, owns stock in DC, a domestic corporation,

through a custodian, Bank 1, that is a participating FFI. A also has a money market account at Bank 2, which is also a participating FFI. DC pays a dividend of \$1,000 that is deposited in A's custodial account at Bank 1. A then directs Bank 1 to transfer \$1,000 to A's money market account at Bank 2. With respect to the payment of the dividend into A's custodial account with Bank 1, both DC and Bank 1 are withholding agents making a withholdable payment for which they have custody, control, and knowledge. See § 1.1473-1(a)(2)(vii)(B) and (d). Therefore, both DC and Bank 1 have an obligation to withhold on the payment unless they can reliably associate the payment with documentation sufficient to treat the respective payees as not subject to withholding under chapter 4. With respect to the wire transfer of \$1,000 from A's account at Bank 1 to A's account at Bank 2, neither Bank 1 nor Bank 2 is required to withhold with respect to the transfer because neither bank has knowledge of the facts that gave rise to the payment. Even though Bank 1 is a custodian with respect to A's interest in DC and has knowledge regarding the \$1,000 dividend paid to A, once Bank 1 credits the \$1,000 dividend to A's account, the \$1,000 becomes A's property. When A transfers the \$1,000 to its account at Bank 2, this constitutes a separate payment about which Bank 1 has no knowledge regarding the type of payment made. Further, Bank 2 only has knowledge that it receives \$1,000 to be credited to A's account but has no knowledge regarding the type of payment made. Accordingly, Bank 1 and Bank 2 have no withholding obligation with respect to the transfer from A's custodial account at Bank 1 to A's money market account at Bank 2.

(ii) *Exception to withholding for certain payments made prior to July 1, 2016 (transitional)*—(A) *In general.* For any withholdable payment made prior to July 1, 2016, with respect to a pre-existing obligation for which a withholding agent does not have documentation indicating the payee's status as a nonparticipating FFI, the withholding agent is not required to withhold under this section and section 1471(a) unless the payee is a prima facie FFI.

(B) *Prima facie FFIs.* If the payee is a prima facie FFI, the withholding agent must treat the payee as a nonparticipating FFI beginning on January 1, 2015, until the date the withholding agent obtains documentation sufficient to establish a different chapter 4 status of the payee. A prima facie FFI means any payee if—

(1) The withholding agent has available as part of its electronically searchable information a designation for the payee as a QI or NQI; or

(2) For an account maintained in the United States, the payee is presumed to be a foreign entity under § 1.1471-3(f) or is documented as a foreign entity for purposes of chapter 3 or 61, and the withholding agent has recorded as part of its electronically searchable information one of the following North American Industry Classification System or Standard Industrial Classification codes indicating that the payee is a financial institution:

(i) Commercial Banking (NAICS 522110).

(ii) Savings Institutions (NAICS 522120).

(iii) Credit Unions (NAICS 522130).

(iv) Other Depository Credit Intermediation (NAICS 522190).

(v) Investment Banking and Securities Dealing (NAICS 523110).

(vi) Securities Brokerage (NAICS 523120).

(vii) Commodity Contracts Dealing (NAICS 523130).

(viii) Commodity Contracts Brokerage (NAICS 523140).

(ix) Miscellaneous Financial Investment Activities (NAICS 523999).

(x) Open-End Investment Funds (NAICS 525910).

(xi) Commercial Banks, NEC (SIC 6029).

(xii) Branches and Agencies of Foreign Banks (branches) (SIC 6081).

(xiii) Foreign Trade and International Banking Institutions (SIC 6082).

(xiv) Asset-Backed Securities (SIC 6189).

(xv) Security & Commodity Brokers, Dealers, Exchanges & Services (SIC 6200).

(xvi) Security Brokers, Dealers & Floation Companies (SIC 6211).

(xvii) Commodity Contracts Brokers & Dealers (SIC 6221).

(xviii) Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices (SIC 6726).

(iii) *Payments to a participating FFI.* Except to the extent provided in paragraph (a)(2)(i) of this section, a withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a participating FFI in accordance with § 1.1471-3(d)(4). For this purpose, a limited branch of a participating FFI is treated as a nonparticipating FFI.

(iv) *Payments to a deemed-compliant FFI.* Except to the extent provided in paragraph (a)(2)(i) or (iii) of this section, a withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a deemed-compliant FFI in accordance with § 1.1471-3(d)(4) through (7). For this purpose, a limited branch of a deemed-compliant FFI is treated as a nonparticipating FFI.

(v) *Payments to an exempt beneficial owner.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment to the extent that the withholding agent can reliably associate the payment with documentation to determine the portion of the payment that is allocable to an exempt beneficial owner in accordance with § 1.1471-3(d)(8). For example, a withholding agent is not required to withhold under this section on a withholdable payment made to a payee that is an exempt beneficial owner with respect to the payment, to a nonparticipating FFI to the extent that the nonparticipating FFI receives the payment as an intermediary on behalf of one or more of its account holders that are exempt beneficial owners, or to a flow-through entity to the extent that the flow-through entity receives the payment with respect to one or more of its partners, beneficiaries, or owners (as applicable) that are exempt beneficial owners. See § 1.1471-3(d)(8)(ii) for special rules for a withholding agent to determine the portion of a

withholdable payment that is beneficially owned by an exempt beneficial owner in the case of a payment made to a nonparticipating FFI.

(vi) *Payments to a territory financial institution.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment made to a payee that the withholding agent can treat as a territory financial institution that beneficially owns the payment in accordance with § 1.1471-3(d)(10)(i). A withholding agent also is not required to withhold under this section on a withholdable payment that the withholding agent can treat, in accordance with § 1.1471-3(d)(10)(ii), as made to a territory financial institution that is a flow-through entity or that acts as an intermediary with respect to the payment and that has agreed to be treated as a U.S. person for purposes of chapters 3 and 4 with respect to the payment. A territory financial institution's agreement to be treated as a U.S. person for purposes of this section must be evidenced by a withholding certificate described in § 1.1471-3(c)(3)(iii)(F) furnished by the territory financial institution to the withholding agent.

(vii) *Payments to an account held with a clearing organization with FATCA-compliant membership.* [Reserved]

(viii) *Payments to certain excepted accounts.* A withholding agent is not required to withhold under chapter 4 on a withholdable payment made to an account described in § 1.1471-5(b)(2).

(5) *Withholding requirements if source or character of payment is unknown—(i) General rule.* If a withholding agent has knowledge of the facts that give rise to a payment but is unable to determine at the time of payment the character of the payment sufficiently to determine whether it is a withholdable payment, such payment must be treated as a withholdable payment. If a withholding agent has knowledge of the facts that give rise to a payment but is unable to determine at the time of payment the source of the payment, such payment must be treated as U.S. source income. For example, if a withholding agent does not know at the time of payment the amount of the payment that is a withholdable pay-

ment, because that calculation depends on facts that are not known at the time of payment (for example, because the withholding agent does not know whether services were performed in the United States or whether the payment constitutes income to the recipient) the withholding agent must withhold an amount necessary to ensure that the amount withheld is not less than 30 percent of the amount that could be a withholdable payment, subject to the limitation that the withheld amount must not exceed 30 percent of the amount paid. Notwithstanding this paragraph (a)(5), a withholding agent may presume a payment to be effectively connected with the conduct of a trade or business in the United States, and thus, not a withholdable payment, if it can do so under § 1.1471-3(f)(6) (regarding payments to certain U.S. branches).

(ii) *Optional escrow procedure.* With respect to a payment described in paragraph (a)(5) of this section, the withholding agent may elect to retain 30 percent of the payment to hold in escrow until the earlier of the date that the amount of the withholdable payment can be determined or one year from the date the amount is placed in escrow, at which time either the withholding becomes due under this section or, to the extent that it is determined that the payment is of a type for which no withholding is required, the escrowed amount must be paid to the payee.

(b) *Grandfathered obligations—(1) Grandfathered treatment of outstanding obligations.* Notwithstanding § 1.1473-1(a), a withholdable payment does not include any payment made under a grandfathered obligation described in paragraph (b)(2)(i)(A) of this section, or any gross proceeds from the disposition of such an obligation. Notwithstanding § 1.1471-5(h), a foreign passthru payment does not include any payment made under a grandfathered obligation described in paragraph (b)(2)(i)(A) or (B) of this section, or any gross proceeds from the disposition of such an obligation. A premium paid with regard to an insurance contract or annuity contract that is a grandfathered obligation is treated as a payment made under a grandfathered obligation.

(2) *Definitions.* The following definitions apply solely for purposes of this paragraph (b).

(i) *Grandfathered obligation*—(A) The term *grandfathered obligation* means—

(1) Any obligation outstanding on July 1, 2014;

(2) Any obligation that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder, provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents;

(3) Any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation. If collateral (or a pool of collateral) secures both grandfathered obligations and obligations that are not grandfathered, the collateral posted to secure the grandfathered obligations may be determined by allocating (pro rata by value) the collateral (or each item comprising the pool of collateral) to all outstanding obligations secured by the collateral (or pool of collateral) or, if the collateral cannot be allocated pro rata to all obligations, by allocating all collateral to obligations that are not grandfathered and withholding to the extent required under chapter 4; and

(4) Any obligation that gives rise to substitute interest (as defined in §1.861-2(a)(7)) that arises from the payee posting a grandfathered obligation described in paragraph (b)(2)(i)(A)(1) of this section as collateral.

(B) Solely for purposes of a foreign passthru payment, the term *grandfathered obligation* also includes any obligation that is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the FEDERAL REGISTER.

(ii) *Obligation*—(A) Except as otherwise provided in paragraph (b)(2)(ii)(B) of this section, the term *obligation* means any legally binding agreement or instrument. An obligation for pur-

poses of this paragraph (b)(2)(i) includes, for example—

(1) A debt instrument (for example, a bond, guaranteed investment certificate, or term deposit);

(2) An agreement to extend credit for a fixed term (for example, a line of credit or a revolving credit facility), provided that the agreement as of its issue date fixes the material terms (including a stated maturity date) under which the credit will be provided;

(3) A derivatives transaction entered into between counterparties under an ISDA Master Agreement that is evidenced by a confirmation;

(4) A life insurance contract under which the entire contract value is payable no later than upon the death of the individual(s) insured under the contract but, in the case of a life insurance contract that contains a provision that permits the substitution of a new individual as the insured under the contract, only until a substitution occurs; and

(5) An immediate annuity contract payable for a period certain or for the life of the annuitant.

(B) An *obligation* for purposes of this paragraph (b)(2)(ii) does not include any legal agreement or instrument that—

(1) Is treated as equity for U.S. tax purposes;

(2) Lacks a stated expiration or term (for example, a savings deposit or demand deposit, a deferred annuity contract, or an annuity contract that permits a substitution of a new individual as the annuitant under the contract);

(3) Is a brokerage agreement, custodial agreement, investment linked insurance contract, investment linked annuity contract, or similar agreement to hold financial assets for the account of others and to make and receive payments of income and other amounts with respect to such assets; or

(4) Is a master agreement that merely sets forth standard terms and conditions that are intended to apply to a series of transactions between parties but that does not set forth all of the specific terms necessary to conclude a particular transaction.

(iii) *Date outstanding.* Except as provided in the following sentence, an obligation that constitutes indebtedness

for U.S. tax purposes is outstanding on the date provided in paragraph (b)(2)(i) if it has an issue date before such date. In all other cases, including an agreement described in paragraph (b)(2)(ii)(A)(2) of this section, an obligation is outstanding on the date provided in paragraph (b)(2)(i) if a legally binding agreement establishing the obligation was executed between the parties to the agreement before such date. Any material modification of an outstanding obligation will result in the obligation being treated as newly issued or executed as of the effective date of such modification.

(iv) *Material modification.* In the case of an obligation that constitutes indebtedness for U.S. tax purposes, a material modification is any significant modification of the debt instrument as defined in § 1.1001-3(e). For life insurance contracts, a material modification includes any substitution of the insured under the contract. In all other cases, whether a modification of an obligation is material is determined based on the facts and circumstances.

(3) *Application to flow-through entities—(i) Partnerships.* A payment made under a grandfathered obligation includes a payment made to a partnership with respect to such obligation and a payment made with respect to a partnership's disposition of such obligation. A payment made under a grandfathered obligation also includes the income from such obligation that is includible in the gross income of a partner with respect to a capital or profits interest in the partnership and the gross proceeds allocated to a partner from the disposition of such obligation as determined under § 1.1473-1(a)(5)(vii).

(ii) *Simple trusts.* A payment made under a grandfathered obligation includes a payment made to a simple trust with respect to such obligation, including a payment made with respect to a simple trust's disposition of such obligation. A payment made under a grandfathered obligation also includes income from such obligation that is includible in the income of a beneficiary and further includes a beneficiary's share of the gross proceeds from a disposition of such obligation as determined under § 1.1473-1(a)(5)(vii).

(iii) *Grantor trusts.* A payment made under a grandfathered obligation includes a payment made to a grantor trust with respect to such obligation, including a payment made with respect to the trust's disposition of such obligation. A payment made under a grandfathered obligation also includes income from such obligation that is includible in the gross income of a person that is treated as an owner of the trust and the gross proceeds from the disposition of such obligation to the extent such owner is treated as owning the portion of the trust that consists of the obligation.

(4) *Determination by withholding agent of grandfathered treatment—(i) In general.* A withholding agent other than the issuer of the obligation (or agent of the issuer) may, absent actual knowledge, rely on a written statement by the issuer of the obligation to determine if such obligation meets the requirements for grandfathered treatment provided under this paragraph (b).

(ii) *Determination of material modification.* For purposes of paragraph (b)(2)(iv) of this section (defining material modification), a withholding agent, other than the issuer of the obligation (or an agent of the issuer), is required to treat a modification of the obligation as material only if the withholding agent has actual knowledge thereof, such as in the event the withholding agent receives a disclosure indicating that there has been or will be a material modification to such obligation. The issuer of the obligation (or an agent of the issuer) that is a withholding agent is required to treat a modification of the obligation as material if the withholding agent knows or has reason to know that a material modification has occurred with respect to the obligation.

(iii) *Record retention.* A withholding agent that relies on a document provided by the issuer of an obligation as described in paragraph (b)(4)(i) or (ii) of this section must retain such document in its records for the applicable period of limitations on assessment and collection with respect to amounts paid under the obligation or from disposition of the obligation.

(c) *Effective/applicability date.* This section applies on January 6, 2017. However, taxpayers may apply these provisions as of January 28, 2013. (For the rules that apply beginning on January 28, 2013, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

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§ 1.1471-3 Identification of payee.

(a) *Payee defined*—(1) *In general.* Except as otherwise provided in this paragraph (a), for purposes of chapter 4 a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount.

(2) *Payee with respect to a financial account.* For purposes of payments made to a financial account and except as otherwise provided in paragraph (a)(3) of this section, the payee is the holder of the financial account.

(3) *Exceptions*—(i) *Certain foreign agents or intermediaries*—(A) Except as otherwise provided in paragraphs (a)(3)(iv) and (vi) of this section (applicable to territory financial institutions and certain U.S. branches), a foreign person that is acting as an agent or intermediary with respect to a payment in accordance with paragraph (b)(1) of this section is not the payee if such foreign person is—

(1) An NFFE, unless the NFFE is a QI that has assumed primary withholding responsibility; or

(2) In the case of a payment of U.S. source FDAP income, a participating FFI, deemed-compliant FFI, or restricted distributor, unless the participating FFI, deemed-compliant FFI, or restricted distributor is a QI that has assumed primary withholding responsibility.

(B) In the case of an agent or intermediary described in paragraph (a)(3)(i)(A) of this section, the payee is the person or persons for whom the agent or intermediary collects the payment. Thus, for example, the payee of a payment of U.S. source FDAP income that the withholding agent can reliably associate with a withholding certifi-

cate from a QI that does not assume primary withholding responsibility with respect to the payment under chapter 3, or a payment to a participating FFI that is an NQI, is the person or persons for whom the QI or NQI acts.

(ii) *Foreign flow-through entity*—(A) A foreign entity that is a flow-through entity is a payee with respect to a payment only if the flow-through entity is—

(1) An FFI that is not a participating FFI or deemed-compliant FFI, or restricted distributor receiving a payment of U.S. source FDAP income;

(2) An excepted NFFE that is not acting as an agent or intermediary with respect to the payment;

(3) A WP or WT that is not acting as an agent or intermediary with respect to the payment; or

(4) Receiving income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States, or receiving a payment of gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States and that is excluded from the definition of a withholdable payment under § 1.1473-1(a)(4).

(B) A withholding agent that makes a withholdable payment to a flow-through entity that is not described in paragraphs (a)(3)(ii)(A)(1) through (3) of this section will be required to treat the partner, beneficiary, or owner (as applicable) as the payee (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (a)(3)(ii)(A)(1) through (3)).

(iii) *U.S. intermediary or agent of a foreign person.* A withholding agent that makes a withholdable payment to a U.S. person and has actual knowledge that the person receiving the payment is acting as an intermediary or agent of a foreign person with respect to the payment must treat such foreign person, and not the intermediary or agent, as the payee of such payment. Notwithstanding the previous sentence, a withholding agent that makes a withholdable payment to a U.S. financial institution or a U.S. insurance broker (to the extent such