

Revisions to Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revisions of Information Reporting Regulations; Correction

Announcement 2001-55

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8881, 2000-23 I.R.B. 1158) which were published in the **Federal Register** on Monday, May 22, 2000 (65 FR 32152). The final regulations relate to withholding of tax on certain U.S. source income paid to foreign persons and related requirements governing the collection, deposit, refunds, and credits of withheld amounts under sections 1461 through 1463.

DATES: This correction is effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Carl Cooper, Laurie Hatten-Boyd, or Kate Hwa (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 1441 of the Internal Revenue Code.

Need for Correction

As published, final regulations (T.D. 8881) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8881), which were the subject of FR Doc. 00-11937, is corrected as follows:

§1.1441-1 [Corrected]

1. On page 32174, columns 1 and 2, §1.1441(b)(3)(ii)(C) is corrected to read as follows:

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

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) *Documentary evidence furnished for offshore account.* If the withholding agent receives valid documentary evidence, as described in §1.6049-5(c)(1) or (4), with respect to an offshore account from an entity but the documentary evidence does not establish the entity's classification as a corporation, trust, estate, or partnership, the withholding agent may presume (in the absence of actual knowledge otherwise) that the entity is the type of person enumerated under §1.6049-4(c)(1)(ii)(B) through (Q) if it can be so treated under any one of those paragraphs without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in §1.6049-4(c)(1)(ii)(B) through (Q), then the payee shall be presumed to be a corporation unless the withholding agent knows, or has reason to know, that the entity is not classified as a corporation for U.S. tax purposes. If a payee is, or is presumed to be, a corporation under this paragraph (b)(3)(ii)(C) and a foreign per-

son under paragraph (b)(3)(iii) of this section, a withholding agent shall not treat the payee as the beneficial owner of income if the withholding agent knows, or has reason to know, that the payee is not the beneficial owner of the income. For this purpose, a withholding agent shall have reason to know that the payee is not a beneficial owner if the documentary evidence indicates that the payee is a bank, broker, intermediary, custodian, or other agent, or is treated under §1.6049-4(c)(1)(ii)(B) through (Q) as such a person. A withholding agent may, however, treat such a person as a beneficial owner if the foreign person provides a statement, in writing and signed by a person with authority to sign the statement, that is attached to the documentary evidence stating it is the beneficial owner of the income.

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2. On page 32175, column 2, §1.1441-1(b)(3)(vi), line 5, the language "this section that has not agreed to be" is corrected to read "this section that has provided a withholding certificate as described in paragraph (e)(3)(v) of this section on which it has not agreed to be".

3. On page 32175, column 2, §1.1441-1(b)(3)(vii)(B), line 9, the language "defined in §1.6059-5(e)) to an offshore" is corrected to read "defined in §1.6049-5(e)) to an offshore".

4. On page 32176, column 3, §1.1441-1(c)(14), line 3, the language "intermediary that is not a qualified" is corrected to read "intermediary that is not a U.S. person and not a qualified".

5. On page 32179, column 1, §1.1441-1(e)(3)(iii)(D), line 7, the language "(e)(3)(iii) or paragraph (e)(3)(iv) of this" is corrected to read "(e)(3)(iii) or paragraph (e)(5)(iv) of this".

6. On page 32180, column 1, §1.1441-1(e)(3)(iv)(C)(I), line 8, the language "intermediary to the withholding agent" is corrected to read "intermediary and provided to the withholding agent".

7. On page 32180, column 2, §1.1441-1(e)(3)(iv)(C)(2), line 5 from the top of the column, the language "person), the withholding certificate" is corrected to read "person), the withholding statement".

8. On page 32180, column 3, §1.1441-1(e)(3)(iv)(D)(2), line 3, the lan-

guage “(e)(3)(iv)(B)(2) of this section allocating” is corrected to read “(e)(3)(iv)(C)(2) of this section allocating”.

9. On page 32180, column 3, §1.1441-1(e)(3)(iv)(D)(2), line 11, the language “(e)(3)(iv)(B) of this section. Further, each” is corrected to read “(e)(3)(iv)(C) of this section. Further, each”.

10. On page 32180, column 3, §1.1441-1(e)(3)(iv)(D)(2), line 25, the language “(e)(3)(iv)(B) of this section (other than” is corrected to read “(e)(3)(iv)(C) of this section (other than”.

11. On page 32181, column 1, §1.1441-1(e)(3)(iv)(D)(3), line 6, the language “payee (including U.S. non-exempt” is corrected to read “payee (including U.S. exempt”.

12. On page 32186, columns 1 and 2, §1.1441-1(e)(5)(v)(C)(2), is corrected to read as follows:

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

- * * * * *
- (e) * * *
- (5) * * *
- (v) * * *
- (C) * * *

(2) *Alternative procedure for U.S. non-exempt recipients.* If permitted under its agreement with the IRS, a qualified intermediary may, by mutual agreement with a withholding agent, establish a single zero withholding rate pool that includes U.S. non-exempt recipient account holders for whom the qualified intermediary has provided Forms W-9 prior to the withholding agent paying any reportable payments, as defined in the qualified intermediary agreement, and a separate withholding rate pool (subject to 31-percent withholding) that includes only U.S. non-exempt recipient account holders for whom a qualified intermediary has not provided Forms W-9 prior to the withholding agent paying any reportable payments. If a qualified intermediary chooses the alternative procedure of this paragraph (e)(5)(v)(C)(2), the qualified intermediary must provide the information required by its qualified intermediary agreement to the withholding agent no later than January 15 of the year following the year in which the payments are paid. Failure to

provide such information will result in the application of penalties to the qualified intermediary under sections 6721 and 6722, as well as any other applicable penalties, and may result in the termination of the qualified intermediary’s withholding agreement with the IRS. A withholding agent shall not be liable for tax, interest, or penalties for failure to backup withhold or report information under chapter 61 of the Internal Revenue Code due solely to the errors or omissions of the qualified intermediary. If a qualified intermediary fails to provide the allocation information required by this paragraph (e)(5)(v)(C)(2), with respect to U.S. non-exempt recipients, the withholding agent shall report the unallocated amount paid from the withholding rate pool to an unknown recipient, or otherwise in accordance with the appropriate Form 1099 and the instructions accompanying the form.

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§1.1441-5 [Corrected]

12a. On page 32193, column 2, §1.1441-5(e)(5), paragraph (e)(5)(ii) is correctly designated paragraph (e)(5)(ii).

13. On page 32193, column 3, §1.1441-5(e)(5)(ii), the last 2 lines of the paragraph, the language “having to identify any partner’s distributive share of the payment.” is corrected to read “having to identify any beneficiary’s or grantor’s distributive share of the payment.”.

§1.1441-7 [Corrected]

14. On page 32198, columns 1 and 2, §1.1441-7(b)(4)(i) is corrected to read as follows:

§1.1441-7 General provisions relating to withholding agents.

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- (b) * * *
- (4) * * * (i) *In general.* A withholding agent has reason to know that a beneficial owner withholding certificate provided by a direct account holder in connection with a payment of an amount described in §1.1441-6(c)(2) is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the direct account holder, the withholding certificate contains any information that is inconsistent with the direct

account holder’s claim, the withholding agent has other account information that is inconsistent with the direct account holder’s claim, or the withholding certificate lacks information necessary to establish entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder’s status as a foreign person or resident of a treaty country, a withholding certificate shall be considered unreliable or inconsistent with an account holder’s claims only if it is not reliable under the rules of paragraphs (b)(5) and (6) of this section. A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent.

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15. On page 32198, column 3, §1.1441-7(b)(5)(i)(A)(I), lines 4 and 5, the language “address) that is no more than three years old, the documentary evidence supports” is corrected to read “address) that has been provided within the past three years, was valid at the time it was provided, the documentary evidence supports”.

16. On page 32201, column 1, §1.1441-7(b)(10)(ii), line 21, the language “withholding certificate relates. A” is corrected to read “withholding certificate. A”.

§1.1461-1 [Corrected]

17. On page 32201, column 3, §1.1461-1, in the section heading “Payment and returns of tax withhold.” is corrected to read “Payment and returns of tax withheld.”.

18. On page 32202, column 1, §1.1461-1(c)(1)(ii)(A)(I), line 2, the language “paragraph (c)(6) of this section,” is corrected to read “§1.1441-1(c)(6).”.

19. On page 32202, column 3, §1.1461-1(c)(2)(i) is corrected by adding the language “and” at the end of the last line of paragraph (c)(2)(i)(L), removing paragraph (2)(i)(M), and correctly designating paragraph (c)(2)(i)(N) as paragraph (c)(2)(i)(M).

20. On page 32203, column 1, §1.1461-1(c)(2)(ii)(H) is corrected to read as follows:

§1.1461-1 Payment and returns of tax withheld.

- * * * * *
- (c) * * *
- (2) * * *

(ii) * * *

(H) Interest (including original issue discount) paid with respect to foreign-targeted registered obligations described in §1.871-14(e)(2) to the extent the documentation requirements described in §1.871-14(e)(3) and (4) are required to be satisfied (taking into account the provisions of §1.871-14(e)(4)(ii), if applicable); * * * * *

§1.6045-1 [Corrected]

21. On page 32206, column 2, §1.6045-1(g)(3)(iv), lines 6 and 7, the language “broker has actual knowledge or reason to know (within the meaning of” is corrected to read “broker has actual knowledge (within the meaning of”.

§1.6049-5 [Corrected]

22. On page 32207, column 3, §1.6049-5(c)(4) introductory text, lines 2 and 3, the language “modifies the provisions of this paragraph (c) for payments to offshore” is corrected to read “modifies the provisions of paragraph (c)(1) of this section for payments to offshore”.

23. On page 32208, columns 2 and 3, §1.6049-5(d)(2)(i), is corrected to read as follows:

§1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(d) * * *

(2) * * * (i) *In general.* Except as otherwise provided in this paragraph (d)(2)(i), for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(2) applies), the provisions of §1.1441-1(b)(3)(i) through (ix) and §1.1441-5(d) and (e)(6) shall apply (by applying the term *payor* instead of the term *withholding agent*) to determine the classification (e.g., individual, corporation, partnership, trust), status (i.e., a U.S. or a foreign person), and other relevant characteristics (e.g., beneficial owner or intermediary) of a payee if a payment cannot be reliably associated with valid documentation under §1.1441-1(b)(2)(vii) irrespective of whether the payments are subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of §1.1441-1(b)(3)(iii)(D) and (vii)(B) shall not apply, however, to payments to amounts that are not subject to withholding. The rules of §1.1441-1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by applying the term *payor* instead of the term *withholding agent*. For this purpose, the documentary evidence or statement described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

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24. On page 32208, column 3, §1.6049-5(d)(2)(ii), line 11, the language “described in §1.1441-6(c)(2) that are” is corrected to read “described in §1.1441-6(c)(2) (or credits an account with broker proceeds from securities described in §1.1441-6(c)(2)), that are”.

25. On page 32209, column 2, §1.6049-5(d)(3)(i), line 11 from the top of the column, the language “determine the payees status for” is corrected to read “determine the payee’s status for”.

26. On page 32209, column 2, §1.6049-5(d)(3)(ii), the last line in the paragraph, the language “an exempt recipient.” is corrected to read “an exempt recipient and has actual knowledge of the amount allocable to such a person.”.

27. On page 32209, column 2, §1.6049-5(d)(3)(iii)(A), line 13, the language “§1.1441-1(b)(3)(ii)(C) or (v)(A) shall be” is corrected to read “§1.1441-1(b)(3)(ii)(C), (v)(A), §1.1441-5(d) or (e), shall be”.

28. On page 32209, column 3, §1.6049-5(d)(3)(iii)(B), line 4 from the top of the column, the language “under §1.1441-3(b)(ii)(C) or (v)(A) for” is corrected to read “as an intermediary for”.

PART 1 – [Corrected]

29. On page 32212, the table in amendatory instruction Par. 18. is corrected by adding two entries in numerical order to read as follows:

Section	Remove	Add
* * * * * 1.6045-1(g)(1)(i), first sentence	or presumed to be made to a foreign payee under §1.6049-5(d)(2), (3), (4), or (5)	or presumed to be made to a foreign payee under §1.6049-5(d)(2) or (3)
* * * * * 1.6049-5(b)(12), first sentence	or presumed to be made to a foreign payee under paragraph (d)(2), (3), (4), or (5) of this section	or presumed to be made to a foreign payee under paragraph (d)(2) or (3) of this section
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