

(D) of section 1402(h)(1) (see subdivisions (i) and (ii) of paragraph (e)(2) of this section).

(g) *Refund or credit.* An application for exemption on Form 4029 filed on or before December 31, 1968 (if approved as provided in paragraph (e) of this section), shall constitute a claim for refund or credit of any tax on self-employment income under section 1401 (or under section 480 of the Internal Revenue Code of 1939) paid or incurred in respect of any taxable year beginning after December 31, 1950, and ending before December 31, 1967, for which an exemption is granted. Refund or credit of any tax referred to in the preceding sentence may be made, pursuant to the provisions of section 501(c) of the Social Security Amendments of 1967 (81 Stat. 933), notwithstanding that the refund or credit would otherwise be prevented by operation of any law or rule of law. No interest shall be allowed or paid in respect of any refund or credit made or allowed in connection with a claim for refund or credit made on Form 4029.

[T.D. 6993, 34 FR 831, Jan. 18, 1969]

§ 1.1403-1 Cross references.

For provisions relating to the requirement for filing returns with respect to net earnings from self-employment, see § 1.6017-1. For provisions relating to declarations of estimated tax on self-employment income, see §§ 1.6015(a) to 1.6015(j)-1, inclusive. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001-1 *et seq.*) and the applicable sections of the regulations in part 301 of this chapter (Regulations on Procedure and Administration).

[T.D. 7427, 41 FR 34026, Aug. 12, 1976]

Withholding of Tax on Nonresident Aliens and Foreign Corporations and Tax-Free Covenant Bonds

NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

§ 1.1441-0 Outline of regulation provisions for section 1441.

This section lists captions contained in §§ 1.1441-1 through 1.1441-9.

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

- (a) Purpose and scope.
- (b) General rules of withholding.
 - (1) Requirement to withhold on payments to foreign persons.
 - (2) Determination of payee and payee's status.
 - (i) In general.
 - (ii) Payments to a U.S. agent of a foreign person.
 - (iii) Payments to wholly-owned entities.
 - (A) Foreign-owned domestic entity.
 - (B) Foreign entity.
 - (iv) Payments to a U.S. branch of certain foreign banks or foreign insurance companies.
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 - (B) Consequences to the withholding agent.
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 - (D) Definition of payment to a U.S. branch.
 - (E) Payments to other U.S. branches.
 - (v) Payments to a foreign intermediary.
 - (A) Payments treated as made to persons for whom the intermediary collects the payment.
 - (B) Payments treated as made to foreign intermediary.
 - (vi) Other payees.
 - (vii) Rules for reliably associating a payment with a withholding certificate or other appropriate documentation.
 - (A) Generally.
 - (B) Special rules applicable to a withholding certificate from a nonqualified intermediary or flow-through entity.
 - (C) Special rules applicable to a withholding certificate provided by a qualified intermediary that does not assume primary withholding responsibility.

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- (D) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code.
- (E) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility but not primary withholding under chapter 3.
- (F) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and primary Form 1099 reporting and backup withholding responsibility and a withholding certificate provided by a withholding foreign partnership.
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 - (ii) Presumptions of classification as individual, corporation, partnership, etc.
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 - (B) No documentation provided.
 - (C) Documentary evidence furnished for offshore account.
 - (iii) Presumption of U.S. or foreign status.
 - (A) Payments to exempt recipients.
 - (B) Scholarships and grants.
 - (C) Pensions, annuities, etc.
 - (D) Certain payments to offshore accounts.
 - (iv) Grace period.
 - (v) Special rules applicable to payments to foreign intermediaries.
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 - (B) Beneficial owner documentation or allocation information is lacking or unreliable.
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 - (ix) Effect of reliance on presumptions and of actual knowledge or reason to know otherwise.
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 - (7) Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions.
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 - (c) Definitions.
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 - (4) Certain foreign corporations.
 - (5) Financial institution and foreign financial institution.
 - (6) Beneficial owner.
 - (i) General rule.
 - (ii) Special rules.
 - (A) General rule.
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 - (C) Foreign simple trusts and foreign grantor trusts.
 - (D) Other foreign trusts and foreign estates.
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 - (8) Person.
 - (9) Source of income.
 - (10) Chapter 3 of the Code.
 - (11) Reduced rate.
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 - (16) Withholding certificate.
 - (17) Documentary evidence; other appropriate documentation.
 - (18) Documentation.
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 - (ii) Payments that a withholding agent may treat as made to a foreign person that is a beneficial owner.
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 - (B) Additional requirements.
 - (2) Beneficial owner withholding certificate.
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 - (ii) Requirements for validity of certificate.
 - (3) Intermediary, flow-through, or U.S. branch withholding certificate.
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 - (ii) Intermediary withholding certificate from a qualified intermediary.
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 - (B) Family of mutual funds.
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 - (5) Qualified intermediaries.
 - (i) General rule.
 - (ii) Definition of qualified intermediary.
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- (A) In general.
- (B) Terms of the withholding agreement.
- (iv) Assignment of primary withholding responsibility.
 - (v) Withholding statement.
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 - (f) Effective date.
 - (1) In general.
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§ 1.1441-2 Amounts subject to withholding.

- (a) In general.
- (b) Fixed or determinable annual or periodical income.
 - (1) In general.
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 - (ii) Manner of payment.
 - (iii) Determinability of amount.
 - (2) Exceptions.
 - (3) Original issue discount.
 - (i) Amount subject to tax.
 - (ii) Amounts subject to withholding.
 - (4) Securities lending transactions and equivalent transactions.
 - (c) Other income subject to withholding.
 - (d) Exceptions to withholding where no money or property is paid or lack of knowledge.
 - (1) General rule.
 - (2) Cancellation of debt.
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 - (6) Payments other than in U.S. dollars.
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§ 1.1441-3 Determination of amounts to be withheld.

- (a) Withholding on gross amount.
- (b) Withholding on payments on certain obligations.
 - (1) Withholding at time of payment of interest.
 - (2) No withholding between interest payment dates.
 - (i) In general.
 - (ii) Anti-abuse rule.
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 - (1) General rule.
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 - (i) In general.
 - (ii) Reasonable estimate of accumulated and current earnings and profits on the date of payment.
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- (B) Procedures in case of underwithholding.
- (C) Reliance by intermediary on reasonable estimate.
- (D) Example.
- (3) Special rules in the case of distributions from a regulated investment company.
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 - (ii) Reliance by intermediary on reasonable estimate.
- (4) Coordination with withholding under section 1445.
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 - (A) Withholding under section 1441.
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 - (C) Coordination with REIT withholding.
 - (ii) Intermediary reliance rule.
 - (d) Withholding on payments that include an undetermined amount of income.
 - (1) In general.
 - (2) Withholding on certain gains.
 - (e) Payments other than in U.S. dollars.
 - (1) In general.
 - (2) Payments in foreign currency.
 - (f) Tax liability of beneficial owner satisfied by withholding agent.
 - (1) General rule.
 - (2) Example.
 - (g) Conduit financing arrangements
 - (h) Effective date.

§ 1.1441-4 Exemptions from withholding for certain effectively connected income and other amounts.

- (a) Certain income connected with a U.S. trade or business.
 - (1) In general.
 - (2) Withholding agent's reliance on a claim of effectively connected income.
 - (i) In general.
 - (ii) Special rules for U.S. branches of foreign persons.
 - (A) U.S. branches of certain foreign banks or foreign insurance companies.
 - (B) Other U.S. branches.
 - (3) Income on notional principal contracts.
 - (i) General rule.
 - (ii) Exception for certain payments.
 - (b) Compensation for personal services of an individual.
 - (1) Exemption from withholding.
 - (2) Manner of obtaining withholding exemption under tax treaty.
 - (i) In general.
 - (ii) Withholding certificate claiming withholding exemption.
 - (iii) Review by withholding agent.
 - (iv) Acceptance by withholding agent.
 - (v) Copies of Form 8233.
 - (3) Withholding agreements.
 - (4) Final payments exemption.
 - (i) General rule.
 - (ii) Final payment of compensation for personal services.
 - (iii) Manner of applying for final payment exemption.
 - (iv) Letter to withholding agent.

- (5) Requirement of return.
- (6) Personal exemption.
 - (i) In general.
 - (ii) Multiple exemptions.
 - (iii) Special rule where both certain scholarship and compensation income are received.
- (c) Special rules for scholarship and fellowship income.
 - (1) In general.
 - (2) Alternate withholding election.
 - (d) Annuities received under qualified plans.
 - (e) Per diem of certain alien trainees.
 - (f) Failure to receive withholding certificates timely or to act in accordance with applicable presumptions.
 - (g) Effective date.
 - (1) General rule.
 - (2) Transition rules.

§ 1.1441-5 Withholding on payments to partnerships, trusts, and estates.

- (a) In general.
- (b) Rules applicable to U.S. partnerships, trusts, and estates.
 - (1) Payments to U.S. partnerships, trusts, and estates.
 - (2) Withholding by U.S. payees.
 - (i) U.S. partnerships.
 - (A) In general.
 - (B) Effectively connected income of partners.
 - (ii) U.S. simple trusts.
 - (iii) U.S. complex trusts and U.S. estates.
 - (iv) U.S. grantor trusts.
 - (v) Subsequent distribution.
 - (c) Foreign partnerships.
 - (1) Determination of payee.
 - (i) Payments treated as made to partners.
 - (ii) Payments treated as made to the partnership.
 - (iii) Rules for reliably associating a payment with documentation.
 - (iv) Examples.
 - (2) Withholding foreign partnerships.
 - (i) Reliance on claim of withholding foreign partnership status.
 - (ii) Withholding agreement.
 - (iii) Withholding responsibility.
 - (iv) Withholding certificate from a withholding foreign partnership.
 - (3) Nonwithholding foreign partnerships.
 - (i) Reliance on claim of foreign partnership status.
 - (ii) Reliance on claim of reduced withholding by a partnership for its partners.
 - (iii) Withholding certificate from a nonwithholding foreign partnership.
 - (iv) Withholding statement provided by nonwithholding foreign partnership.
 - (v) Withholding and reporting by a foreign partnership.
 - (d) Presumption rules.
 - (1) In general.
 - (2) Determination of partnership's status as domestic or foreign in the absence of documentation.

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(3) Determination of partners' status in the absence of certain documentation.

(4) Determination by a withholding foreign partnership of the status of its partners.

(e) Foreign trusts and estates.

(1) In general.

(2) Payments to foreign complex trusts and estates.

(3) Payees of payments to foreign simple trusts and foreign grantor trusts.

(i) Payments for which beneficiaries and owners are payees.

(ii) Payments for which trust is payee.

(4) Reliance on claim of foreign complex trust or foreign estate status.

(5) Foreign simple trust and foreign grantor trust.

(i) Reliance on claim of foreign simple trust or foreign grantor trust status.

(ii) Reliance on claim of reduced withholding by a foreign simple trust or foreign grantor trust for its beneficiaries or owners.

(iii) Withholding certificate from foreign simple trust or foreign grantor trust.

(iv) Withholding statement provided by a foreign simple trust or foreign grantor trust.

(v) Withholding foreign trusts.

(6) Presumption rules.

(i) In general.

(ii) Determination of status as U.S. or foreign trust or estate in the absence of documentation.

(iii) Determination of beneficiary or owner's status in the absence of certain documentation.

(f) Failure to receive withholding certificate timely or to act in accordance with applicable presumptions.

(g) Effective date.

(1) General rule.

(2) Transition rules.

§ 1.1441-6 Claim of reduced withholding under an income tax treaty.

(a) In general.

(b) Reliance on claim of reduced withholding under an income tax treaty.

(1) In general.

(2) Payment to fiscally transparent entity.

(i) In general.

(ii) Certification by qualified intermediary.

(iii) Dual treatment.

(iv) Examples.

(3) Certified TIN.

(4) Claim of benefits under an income tax treaty by a U.S. person.

(c) Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income.

(1) In general.

(2) Income to which special rules apply.

(3) Certificate of residence.

(4) Documentary evidence establishing residence in the treaty country.

(i) Individuals.

(ii) Persons other than individuals.

(5) Statements regarding entitlement to treaty benefits.

(i) Statement regarding conditions under a limitation on benefits provision.

(ii) Statement regarding whether the taxpayer derives the income.

(d) Joint owners.

(e) Competent authority.

(f) Failure to receive withholding certificate timely.

(g) Effective date.

(1) General rule.

(2) Transition rules.

§ 1.1441-7 General provisions relating to withholding agents.

(a) Withholding agent defined.

(1) In general.

(2) Examples.

(b) Standards of knowledge.

(1) In general.

(2) Reason to know.

(3) Financial institutions—limits on reason to know.

(4) Rules applicable to withholding certificates.

(i) In general.

(ii) Examples.

(5) Withholding certificate—establishment of foreign status.

(6) Withholding certificate—claim of reduced rate of withholding under treaty.

(7) Documentary evidence.

(8) Documentary evidence—establishment of foreign status.

(9) Documentary evidence—claim of reduced rate of withholding under treaty.

(10) Limits on reason to know—indirect account holders.

(11) Additional guidance.

(c) Authorized agent.

(1) In general.

(2) Authorized foreign agent.

(3) Notification.

(4) Liability of U.S. withholding agent.

(5) Filing of returns.

(d) United States obligations.

(e) Assumed obligations.

(f) Conduit financing arrangements.

(g) Effective date.

§ 1.1441-8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

(a) Foreign governments.

(b) Reliance on claim of exemption by foreign government.

(c) Income of a foreign central bank of issue or the Bank for International Settlements.

(1) Certain interest income.

(2) Bankers' acceptances.

(d) Exemption for payments to international organizations.

(e) Failure to receive withholding certificate timely and other applicable procedures.

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- (f) Effective date.
- (1) In general.
- (2) Transition rules.

§ 1.1441-9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

- (a) Exemption from withholding for exempt income.
- (b) Reliance on foreign organization's claim of exemption from withholding.
 - (1) General rule.
 - (2) Withholding certificate.
 - (3) Presumptions in the absence of documentation.
 - (4) Reason to know.
- (c) Failure to receive withholding certificate timely and other applicable procedures.
 - (d) Effective date.
 - (1) In general.
 - (2) Transition rules.

[T.D. 8734, 62 FR 53421, Oct. 14, 1997, as amended by T.D. 8881, 66 FR 32168, May 22, 2000]

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

(a) *Purpose and scope.* This section, §§ 1.1441-2 through 1.1441-9, and 1.1443-1 provide rules for withholding under sections 1441, 1442, and 1443 when a payment is made to a foreign person. This section provides definitions of terms used in chapter 3 of the Internal Revenue Code (Code) and regulations thereunder. It prescribes procedures to determine whether an amount must be withheld under chapter 3 of the Code and documentation that a withholding agent may rely upon to determine the status of a payee or a beneficial owner as a U.S. person or as a foreign person and other relevant characteristics of the payee that may affect a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder. Special procedures regarding payments to foreign persons that act as intermediaries are also provided. Section 1.1441-2 defines the income subject to withholding under section 1441, 1442, and 1443 and the regulations under these sections. Section 1.1441-3 provides rules regarding the amount subject to withholding. Section 1.1441-4 provides exemptions from withholding for, among other things, certain income effectively connected with the conduct of a trade or business in the United States, includ-

ing certain compensation for the personal services of an individual. Section 1.1441-5 provides rules for withholding on payments made to flow-through entities and other similar arrangements. Section 1.1441-6 provides rules for claiming a reduced rate of withholding under an income tax treaty. Section 1.1441-7 defines the term *withholding agent* and provides due diligence rules governing a withholding agent's obligation to withhold. Section 1.1441-8 provides rules for relying on claims of exemption from withholding for payments to a foreign government, an international organization, a foreign central bank of issue, or the Bank for International Settlements. Sections 1.1441-9 and 1.1443-1 provide rules for relying on claims of exemption from withholding for payments to foreign tax exempt organizations and foreign private foundations.

(b) *General rules of withholding—(1) Requirement to withhold on payments to foreign persons.* A withholding agent must withhold 30-percent of any payment of an amount subject to withholding made to a payee that is a foreign person unless it 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. However, a withholding agent making a payment to a foreign person need not withhold where the foreign person assumes responsibility for withholding on the payment under chapter 3 of the Code and the regulations thereunder as a qualified intermediary (see paragraph (e)(5) of this section), as a U.S. branch of a foreign person (see paragraph (b)(2)(iv) of this section), as a withholding foreign partnership (see § 1.1441-5(c)(2)(i)), or as an authorized foreign agent (see § 1.1441-7(c)(1)). This section (dealing with general rules of withholding and claims of foreign or U.S. status by a payee or a beneficial owner), and §§ 1.1441-4, 1.1441-5, 1.1441-6, 1.1441-8, 1.1441-9, and 1.1443-1 provide rules for determining whether documentation is required as a condition for reducing the rate of withholding on a payment to a foreign beneficial owner or to a U.S. payee and if so, the