

Part III

Administrative, Procedural, and Miscellaneous

Extension of Transition Relief for Foreign Partnerships and their Withholding Agents under Notice 2001-4.

Notice 2002-66

SECTION 1. PURPOSE

This Notice extends the transitional documentation and reporting relief specified in Section IV of Notice 2001-4, 2001-2 I.R.B. 267, for foreign partnerships, Qualified Intermediaries (QI), and U.S. withholding agents through the end of calendar year 2002.

SECTION 2. BACKGROUND

In T.D. 8734, as modified by T.D. 8881, the IRS issued comprehensive regulations (withholding regulations) under sections 1441-1446 and 6041-6050S of the Internal Revenue Code (the Code). These regulations became effective January 1, 2001.

Under the withholding regulations, as well as the qualified intermediary withholding agreement (QI Agreement), a foreign partnership generally is treated as a flow-through entity. Therefore, prior to receiving a payment, it must provide a withholding agent, including a QI, with a Form W-8IMY together with documentation from each partner and a withholding statement that allocates the payment to each of the partners in the partnership.

The IRS recognizes that, under these rules, the withholding agent may receive a high volume of documentation and may therefore experience significant processing

problems. The withholding regulations address this problem by allowing a foreign partnership to become a withholding foreign partnership under an agreement with the IRS similar to the QI Agreement. A withholding foreign partnership generally would not be required to provide documentation for its partners to the withholding agent.

As transition relief, pending the publication of a model agreement for entering into a withholding foreign partnership arrangement, the IRS issued Notice 2001-4, applicable to calendar year 2001. Notice 2001-4 allowed foreign partnerships to provide the withholding agent with a withholding statement based on withholding rate pools, along with certain other documentation. In addition, under Notice 2001-4, the required documentation for partners that were foreign persons or U.S. exempt recipients could be provided to the withholding agent at any time during the calendar year 2001.

In Notice 2002-41, 2002-24 I.R.B. 1153, the IRS published proposed guidance for entering into a withholding foreign partnership (WP) or withholding foreign trust (WT) agreement. These proposed WP and WT agreements addressed the unique features of partnerships and trusts by adopting tailored procedures for documentation, reporting, and audit that were intended to facilitate compliance and reduce administrative and audit costs.

To allow time for comments on the proposed WP and WT agreements, the IRS has determined that it is appropriate to extend the transition relief for foreign partnerships under Section IV of Notice 2001-4 to calendar year 2002. The IRS anticipates that it will finalize the WP and WT agreements in the near future and will enter into WP and WT agreements with foreign partnerships and trusts in 2003. Such partnerships and trusts will be able to function as WPs or WTs as of the beginning of 2003. The transition relief for foreign partnerships under Section IV of Notice 2001-4 will be rendered obsolete when the

guidance for entering into a WP agreement is finalized. Accordingly, this Notice will extend the relief provided in Section IV of Notice 2001-4, through the end of calendar year 2002.

SECTION 3. TRANSITION RELIEF

Under the transition relief of Section IV of Notice 2001-4, as extended by this Notice, for calendar year 2002, the IRS will permit a foreign partnership to provide a withholding agent, including a QI, with a Form W-8IMY together with a withholding statement that provides the withholding agent with information regarding withholding rate pools. The foreign partnership must provide a separate withholding rate pool for each U.S. non-exempt recipient partner. The foreign partnership must associate the documentation from each of its partners with the Form W-8IMY. If a partner is a foreign person or a U.S. exempt recipient (e.g., a corporation), that documentation may be provided to the withholding agent at any time during calendar year 2002. If a partner is a U.S. non-exempt recipient, a Form W-9 must be provided before a payment is made to a partnership. For more detailed information regarding this transition relief, see Section IV of Notice 2001-4.

CONTACT INFORMATION

The principal author of this Notice is Marc J. Korab of the Office of the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. For further information regarding this Notice, contact Mr. Korab at 202-622-3840 (not a toll-free call).