

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.
          - (A) U.S. branch treated as a U.S. person in certain cases.
          - (B) Consequences to the withholding agent.
          - (C) Consequences to the U.S. branch.
          - (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.
  - (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.
- (3) Presumptions regarding payee's status in the absence of documentation.
  - (i) General rules.
  - (ii) Presumptions of classification as individual, corporation, partnership, etc.
    - (A) In general.
    - (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.
        - (A) Reliance on claim of status as foreign intermediary.
        - (B) Beneficial owner documentation or allocation information is lacking or unreliable.
        - (C) Information regarding allocation of payment is lacking or unreliable.
        - (D) Certification that the foreign intermediary has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.
          - (vi) U.S. branches.
          - (vii) Joint payees.
            - (A) In general.
            - (B) Special rule for offshore accounts.
          - (viii) Rebuttal of presumptions.
        - (ix) Effect of reliance on presumptions and of actual knowledge or reason to know otherwise.
          - (A) General rule.
          - (B) Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.
      - (x) Examples.
  - (4) List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.



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- (A) In general.
- (B) Terms of the withholding agreement.
- (iv) Assignment of primary withholding responsibility.
- (v) Withholding statement.
- (A) General rule.
- (B) Content of withholding statement.
- (C) Withholding rate pools.
- (f) Effective date.
- (1) In general.
- (2) Transition rules.
- (i) Special rules for existing documentation.
- (ii) Lack of documentation for past years.

*§ 1.1441-2 Amounts subject to withholding.*

- (a) In general.
- (b) Fixed or determinable annual or periodical income.
- (1) In general.
- (i) Definition.
- (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.
- (3) Satisfaction of liability following underwithholding by withholding agent.
- (e) Payment.
- (1) General rule.
- (2) Income allocated under section 482.
- (3) Blocked income.
- (4) Special rules for dividends.
- (5) Certain interest accrued by a foreign corporation.
- (6) Payments other than in U.S. dollars.
- (f) Effective date.

*§ 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.
- (c) Corporate distributions.
- (1) General rule.
- (2) Exception to withholding on distributions.
- (i) In general.
- (ii) Reasonable estimate of accumulated and current earnings and profits on the date of payment.
- (A) General rule.

- (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.
- (i) General rule
- (ii) Reliance by intermediary on reasonable estimate.
- (4) Coordination with withholding under section 1445.
- (i) In general.
- (A) Withholding under section 1441.
- (B) Withholding under both sections 1441 and 1445.
- (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.

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- (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.

- (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.

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- (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) Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits.
  - (1) General rule.
  - (2) Special rule.
  - (3) Requirement that an ITIN be requested during the first business day following payment.
  - (4) Definition of unexpected payment.
  - (5) Examples.
  - (h) Effective dates.
    - (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.
  - (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.

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**§ 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