

CHAPTER 4—TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS

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SECTION 1471. WITHHOLDABLE PAYMENTS TO FOREIGN FINANCIAL INSTITUTIONS

(A) IN GENERAL

In the case of any withholdable payment to a foreign financial institution which does not meet the requirements of subsection (b), the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

(B) REPORTING REQUIREMENTS, ETC.

(1) In general

The requirements of this subsection are met with respect to any foreign financial institution if an agreement is in effect between such institution and the Secretary under which such institution agrees -

- (A) to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,
- (B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts,
- (C) in the case of any United States account maintained by such institution, to report on an annual basis the information described in subsection (c) with respect to such account,
- (D) to deduct and withhold a tax equal to 30 percent of -
 - (i) any passthru payment which is made by such institution to a recalcitrant account holder or another foreign financial institution which does not meet the requirements of this subsection, and
 - (ii) in the case of any passthru payment which is made by such institution to a foreign financial institution which has in effect an election under paragraph (3) with respect to such payment, so much of such payment as is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection,
- (E) to comply with requests by the Secretary for additional information with respect to any United States account maintained by such institution, and
- (F) in any case in which any foreign law would (but for a waiver described in clause (i)) prevent the reporting of any information referred to in this subsection or subsection (c) with respect to any United States account maintained by such institution -
 - (i) to attempt to obtain a valid and effective waiver of such law from each holder of such account, and
 - (ii) if a waiver described in clause (i) is not obtained from each such holder within a reasonable period of time, to close such account.

Any agreement entered into under this subsection may be terminated by the Secretary upon a determination by the Secretary that the foreign financial institution is out of compliance with such agreement.

(2) Financial institutions deemed to meet requirements in certain cases

A foreign financial institution may be treated by the Secretary as meeting the requirements of this subsection if -

- (A) such institution—
 - (i) complies with such procedures as the Secretary may prescribe to ensure that such institution does not maintain United States accounts, and
 - (ii) meets such other requirements as the Secretary may prescribe with respect to accounts of other foreign financial institutions maintained by such institution, or
- (B) such institution is a member of a class of institutions with respect to which the Secretary has determined that the application of this section is not necessary to carry out the purposes of this section.

(3) Election to be withheld upon rather than withhold on payments to recalcitrant account holders and non-participating foreign financial institutions

In the case of a foreign financial institution which meets the requirements of this subsection and such other requirements as the Secretary may provide and which elects the application of this paragraph -

- (A) the requirements of paragraph (1)(D) shall not apply,
- (B) the withholding tax imposed under subsection (a) shall apply with respect to any withholdable payment to such institution to the extent such payment is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection, and
- (C) the agreement described in paragraph (1) shall—
 - (i) require such institution to notify the withholding agent with respect to each such payment of the institution's election under this paragraph and such other information as may be necessary for the withholding agent to determine the appropriate amount to deduct and withhold from such payment, and
 - (ii) include a waiver of any right under any treaty of the United States with respect to any amount deducted and withheld pursuant to an election under this paragraph.

To the extent provided by the Secretary, the election under this paragraph may be made with respect to certain classes or types of accounts of the foreign financial institution.

(C) INFORMATION REQUIRED TO BE REPORTED ON UNITED STATES ACCOUNTS

(1) In general

The agreement described in subsection (b) shall require the foreign financial institution to report the following with respect to each United States account maintained by such institution:

- (A) The name, address, and TIN of each account holder which is a specified United States person and, in the case of any account holder which is a United States owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity.
- (B) The account number.
- (C) The account balance or value (determined at such time and in such manner as the Secretary may provide).

- (D) Except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).

(2) Election to be subject to same reporting as United States financial institutions

In the case of a foreign financial institution which elects the application of this paragraph -

- (A) subparagraphs (C) and (D) of paragraph (1) shall not apply, and
- (B) the agreement described in subsection (b) shall require such foreign financial institution to report such information with respect to each United States account maintained by such institution as such institution would be required to report under sections 6041, 6042, 6045, and 6049 if -
 - (i) such institution were a United States person, and
 - (ii) each holder of such account which is a specified United States person or United States owned foreign entity were a natural person and citizen of the United States.

An election under this paragraph shall be made at such time, in such manner, and subject to such conditions as the Secretary may provide.

(3) Separate requirements for qualified intermediaries

In the case of a foreign financial institution which is treated as a qualified intermediary by the Secretary for purposes of section 1441 and the regulations issued thereunder, the requirements of this section shall be in addition to any reporting or other requirements imposed by the Secretary for purposes of such treatment.

(D) DEFINITIONS

For purposes of this section -

(1) United States account

(A) In general

The term "United States account" means any financial account which is held by one or more specified United States persons or United States owned foreign entities.

(B) Exception for certain accounts held by individuals

Unless the foreign financial institution elects to not have this subparagraph apply, such term shall not include any depository account maintained by such financial institution if—

- (i) each holder of such account is a natural person, and
- (ii) with respect to each holder of such account, the aggregate value of all depository accounts held (in whole or in part) by such holder and maintained by the same financial institution which maintains such account does not exceed \$50,000.

To the extent provided by the Secretary, financial institutions which are members of the same expanded affiliated group shall be treated for purposes of clause (ii) as a single financial institution.

(C) Elimination of duplicative reporting requirements

Such term shall not include any financial account in a foreign financial institution if -

- (i) such account is held by another financial institution which meets the requirements of subsection (b), or

- (ii) the holder of such account is otherwise subject to information reporting requirements which the Secretary determines would make the reporting required by this section with respect to United States accounts duplicative.

(2) Financial account

Except as otherwise provided by the Secretary, the term "financial account" means, with respect to any financial institution—

- (A) any depository account maintained by such financial institution,
- (B) any custodial account maintained by such financial institution, and
- (C) any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market).

Any equity or debt interest which constitutes a financial account under subparagraph (C) with respect to any financial institution shall be treated for purposes of this section as maintained by such financial institution.

(3) United States owned foreign entity

The term "United States owned foreign entity" means any foreign entity which has one or more substantial United States owners.

(4) Foreign financial institution

The term "foreign financial institution" means any financial institution which is a foreign entity. Except as otherwise provided by the Secretary, such term shall not include a financial institution which is organized under the laws of any possession of the United States.

(5) Financial institution

Except as otherwise provided by the Secretary, the term "financial institution" means any entity that -

- (A) accepts deposits in the ordinary course of a banking or similar business,
- (B) as a substantial portion of its business, holds financial assets for the account of others, or
- (C) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

(6) Recalcitrant account holder

The term "recalcitrant account holder" means any account holder which -

- (A) fails to comply with reasonable requests for the information referred to in subsection (b)(1)(A) or (c)(1)(A), or
- (B) fails to provide a waiver described in subsection (b)(1)(F) upon request.

(7) Passthru payment

The term "passthru payment" means any withholdable payment or other payment to the extent attributable to a withholdable payment.

(E) AFFILIATED GROUPS

(1) In general

The requirements of subsections (b) and (c)(1) shall apply—

- (A) with respect to United States accounts maintained by the foreign financial institution, and
- (B) except as otherwise provided by the Secretary, with respect to United States accounts maintained by each other foreign financial institution (other than any foreign financial institution which meets the requirements of subsection (b)) which is a member of the same expanded affiliated group as such foreign financial institution.

(2) Expanded affiliated group

For purposes of this section, the term "expanded affiliated group" means an affiliated group as defined in section 1504(a), determined -

- (A) by substituting "more than 50 percent" for "at least 80 percent" each place it appears, and
- (B) without regard to paragraphs (2) and (3) of section 1504(b).

A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(F) EXCEPTION FOR CERTAIN PAYMENTS

Subsection (a) shall not apply to any payment to the extent that the beneficial owner of such payment is -

- (1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,
- (2) any international organization or any wholly owned agency or instrumentality thereof,
- (3) any foreign central bank of issue, or
- (4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

EFFECTIVE DATE

- "(1) **In general.** Except as otherwise provided in this subsection, the amendments made by this section [enacting this chapter and amending sections 6414, 6501, 6513, 6611, and 6724 of this title] shall apply to payments made after December 31, 2012.
- "(2) **Grandfathered treatment of outstanding obligations.** The amendments made by this section shall not require any amount to be deducted or withheld from any payment under any obligation outstanding on the date which is 2 years after the date of the enactment of this Act [Mar. 18, 2010] or from the gross proceeds from any disposition of such an obligation.
- "(3) **Interest on overpayments.** The amendment made by subsection (b) [amending section 6611 of this title] shall apply-
 - "(A) in the case of such amendment's application to paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986, to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act,

"(B) in the case of such amendment's application to paragraph (2) of such section, to claims for credit or refund of any overpayment filed after the date of the enactment of this Act (regardless of the taxable period to which such refund relates), and

"(C) in the case of such amendment's application to paragraph (3) of such section, to refunds paid after the date of the enactment of this Act (regardless of the taxable period to which such refund relates)."

SECTION 1472 WITHHOLDABLE PAYMENTS TO OTHER FOREIGN ENTITIES

(A) IN GENERAL

In the case of any withholdable payment to a non-financial foreign entity, if -

- (1) the beneficial owner of such payment is such entity or any other non-financial foreign entity, and
- (2) the requirements of subsection (b) are not met with respect to such beneficial owner,

then the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

(B) REQUIREMENTS FOR WAIVER OF WITHHOLDING

The requirements of this subsection are met with respect to the beneficial owner of a payment if -

- (1) such beneficial owner or the payee provides the withholding agent with either -
 - (A) a certification that such beneficial owner does not have any substantial United States owners, or
 - (B) the name, address, and TIN of each substantial United States owner of such beneficial owner,
- (2) the withholding agent does not know, or have reason to know, that any information provided under paragraph (1) is incorrect, and
- (3) the withholding agent reports the information provided under paragraph (1)(B) to the Secretary in such manner as the Secretary may provide.

(C) EXCEPTIONS

Subsection (a) shall not apply to -

- (1) except as otherwise provided by the Secretary, any payment beneficially owned by—
 - (A) any corporation the stock of which is regularly traded on an established securities market,
 - (B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation described in subparagraph (A),
 - (C) any entity which is organized under the laws of a possession of the United States and which is wholly owned by one or more bona fide residents (as defined in section 937(a)) of such possession,
 - (D) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,
 - (E) any international organization or any wholly owned agency or instrumentality thereof,
 - (F) any foreign central bank of issue, or
 - (G) any other class of persons identified by the Secretary for purposes of this subsection, and

- (2) any class of payments identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

(D) NON-FINANCIAL FOREIGN ENTITY

For purposes of this section, the term "non-financial foreign entity" means any foreign entity which is not a financial institution (as defined in section 1471(d)(5)).

SECTION 1473 DEFINITIONS

For purposes of this chapter -

(1) WITHHOLDABLE PAYMENT

Except as otherwise provided by the Secretary -

(A) In general

The term "withholdable payment" means -

- (i) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States, and
- (ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

(B) Exception for income connected with United States business

Such term shall not include any item of income which is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

(C) Special rule for sourcing interest paid by foreign branches of domestic financial institutions

Subparagraph (B) of section 861(a)(1) shall not apply.

(2) SUBSTANTIAL UNITED STATES OWNER

(A) In general

The term "substantial United States owner" means -

- (i) with respect to any corporation, any specified United States person which owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value),
- (ii) with respect to any partnership, any specified United States person which owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership, and
- (iii) in the case of a trust -
 - (I) any specified United States person treated as an owner of any portion of such trust under subpart E of part I of subchapter J of chapter 1, and

- (II) to the extent provided by the Secretary in regulations or other guidance, any specified United States person which holds, directly or indirectly, more than 10 percent of the beneficial interests of such trust.

(B) Special rule for investment vehicles

In the case of any financial institution described in section 1471(d)(5)(C), clauses (i), (ii), and (iii) of subparagraph (A) shall be applied by substituting "0 percent" for "10 percent".

(3) SPECIFIED UNITED STATES PERSON

Except as otherwise provided by the Secretary, the term "specified United States person" means any United States person other than -

- (A) any corporation the stock of which is regularly traded on an established securities market,
- (B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation the stock of which is regularly traded on an established securities market,
- (C) any organization exempt from taxation under section 501(a) or an individual retirement plan,
- (D) the United States or any wholly owned agency or instrumentality thereof,
- (E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,
- (F) any bank (as defined in section 581),
- (G) any real estate investment trust (as defined in section 856),
- (H) any regulated investment company (as defined in section 851),
- (I) any common trust fund (as defined in section 584(a)), and
- (J) any trust which -
 - (i) is exempt from tax under section 664(c), or
 - (ii) is described in section 4947(a)(1).

(4) WITHHOLDING AGENT

The term "withholding agent" means all persons, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment.

(5) FOREIGN ENTITY

The term "foreign entity" means any entity which is not a United States person.

SECTION 1474 SPECIAL RULES

(A) LIABILITY FOR WITHHELD TAX

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

(B) CREDITS AND REFUNDS

(1) In general

Except as provided in paragraph (2), the determination of whether any tax deducted and withheld under this chapter results in an overpayment by the beneficial owner of the payment to which such tax is attributable shall be made as if such tax had been deducted and withheld under subchapter A of chapter 3.

(2) Special rule where foreign financial institution is beneficial owner of payment

(A) In general

In the case of any tax properly deducted and withheld under section 1471 from a specified financial institution payment-

- (i) if the foreign financial institution referred to in subparagraph (B) with respect to such payment is entitled to a reduced rate of tax with respect to such payment by reason of any treaty obligation of the United States -
 - (I) the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate, and
 - (II) no interest shall be allowed or paid with respect to such credit or refund, and
- (ii) if such foreign financial institution is not so entitled, no credit or refund shall be allowed or paid with respect to such tax.

(B) Specified financial institution payment

The term "specified financial institution payment" means any payment if the beneficial owner of such payment is a foreign financial institution.

(3) Requirement to identify substantial United States owners

No credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under this chapter unless the beneficial owner of the payment provides the Secretary such information as the Secretary may require to determine whether such beneficial owner is a United States owned foreign entity (as defined in section 1471(d)(3)) and the identity of any substantial United States owners of such entity.

(C) CONFIDENTIALITY OF INFORMATION

(1) In general

For purposes of this chapter, rules similar to the rules of section 3406(f) shall apply.

(2) Disclosure of list of participating foreign financial institutions permitted

The identity of a foreign financial institution which meets the requirements of section 1471(b) shall not be treated as return information for purposes of section 6103.

(D) COORDINATION WITH OTHER WITHHOLDING PROVISIONS

The Secretary shall provide for the coordination of this chapter with other withholding provisions under this title, including providing for the proper crediting of amounts deducted and withheld under this chapter against amounts required to be deducted and withheld under such other provisions.

(E) TREATMENT OF WITHHOLDING UNDER AGREEMENTS

Any tax deducted and withheld pursuant to an agreement described in section 1471(b) shall be treated for purposes of this title as a tax deducted and withheld by a withholding agent under section 1471(a).

(F) REGULATIONS

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of, and prevent the avoidance of, this chapter.

