

REIT actually designates, or characterizes in accordance with paragraph (c)(2)(ii)(C) of this section, as a capital gain dividend in accordance with 17 CFR 240.10b-17(b) (1) or (3), with respect to each share or certificate of beneficial interest. A deemed designation under paragraph (c)(2)(ii)(A) of this section may not be the subject of a qualified notice under this paragraph (f). A person described in paragraph (b)(3) of this section shall be treated as receiving a qualified notice at the time such notice is published in accordance with 17 CFR 240.10b-17(b) (1) or (3).

(g) *Reporting and paying over withheld amounts.* With respect to an amount withheld under this section, a withholding agent is not required to conform to the requirements of §1.1445-5(b)(5) but is required to report and pay over to the Internal Revenue Service any amount required to be withheld pursuant to the rules and procedures of section 1461, the regulations thereunder and §1.6302-2. Forms 1042 and 1042S are to be used for this purpose.

(h) *Early refund procedure not available.* The early refund procedure set forth in §1.1445-6(g) shall not apply to amounts withheld under the rules of this section. For adjustment of over-withheld amounts, see §1.1461.4.

(i) *Liability upon failure to withhold.* For rules regarding liability upon failure to withhold under §1445(e) and this section, see §1.1445-1(e).

[T.D. 8321, 55 FR 50553, Dec. 7, 1990; 56 FR 4542, Feb. 5, 1991, as amended by T.D. 8647, 60 FR 66077, Dec. 21, 1995]

§1.1445-10T Special rule for Foreign governments (temporary).

(a) This section provides a temporary regulation that, if and when adopted as a final regulation will add a new paragraph (d)(6) to §1.1445-2. Paragraph (b) of this section would then appear as paragraph (d)(6) of §1.1445-2.

(b) *Foreign government*—(1) *As transferor.* A foreign government is subject to U.S. taxation under section 897 on the disposition of a U.S. real property interest except to the extent specifically otherwise provided in the regulations issued under section 892. A foreign government that disposes of a U.S. real property interest that is not subject to taxation as specifically pro-

vided by the regulations under section 892 may present a notice of nonrecognition treatment pursuant to paragraph (d)(2) of this section that specifically cites the provision of such regulation, and thereby avoids withholding by the transferee of the property. A foreign government that disposes of a U.S. real property interest or the transferee of the property may obtain a withholding certificate from the Internal Revenue Service that confirms the applicability of section 892, but neither is required to do so. Rules concerning the issuance of withholding certificates are provided in §1.1445-3.

(2) *As transferee.* A foreign government or international organization that acquires a U.S. real property interest is fully subject to section 1445 and the regulations thereunder. Therefore, such an entity is required to withhold tax upon the acquisition of a U.S. real property interest from a foreign person.

(c) *Effective date.* The rules of this section shall be effective for transfers, exchanges, distributions and other dispositions occurring on or after June 6, 1988.

[T.D. 8198, 53 FR 16230, May 5, 1988]

§1.1445-11T Special rules requiring withholding under §1.1445-5 (temporary).

(a) *Purpose and scope.* This section provides temporary regulations that, if and when adopted as a final regulation will add certain new paragraphs within §1.1445-5 (b) and (c). The paragraphs of this section would then appear as set forth below. Paragraph (b) of this section would then appear as paragraph (b)(8)(v) of §1.1445-5. Paragraph (c) of this section would then appear as paragraph (c)(2)(i) of §1.1445-5. Paragraph (d) of this section would then appear as paragraph (g) of §1.1445-5.

(b) *Dispositions of interests in partnerships, trusts, and estates.* The provisions of section 1445(e)(5), requiring withholding upon certain dispositions of interests in partnerships, trusts, and estates, that own directly or indirectly a U.S. real property interest shall apply to dispositions on or after the effective date of a later Treasury decision under section 897(g) of the Code except in the

case of dispositions of interests in partnerships in which fifty percent of the value of the gross assets consist of U.S. real property interests and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents. The provisions of section 1445(e)(5), shall apply, however, to dispositions after June 6, 1988, of interests in partnerships in which fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents. See paragraph (d) of this section.

(c) *Transactions covered elsewhere.* No withholding is required under this paragraph (c) with respect to the distribution of a U.S. real property interest by a partnership, trust, or estate. Such distributions shall be subject to withholding under section 1445(e)(4) and paragraph (f) of this § 1.1445-5 on the effective date of a later Treasury decision published under section 897(g) of the Code. No withholding is required at this time for distributions described in the preceding sentence. See paragraph (b)(8)(iv) of this § 1.1445-5. No withholding is required under this paragraph with respect to the disposition of an interest in a trust, estate, or partnership except in the case of a partnership in which fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents. See paragraph (b)(8)(v) of § 1.1445-5. Withholding shall be required as provided in section 1445(e)(5) and paragraph (g) of this section with respect to the disposition after June 6, 1988, of an interest in a partnership in which fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents.

(d) *Dispositions of interests in partnerships, trusts or estates—(1) Withholding required on disposition of certain partnership interests.* Withholding is required

under section 1445(e)(5) and this paragraph with respect to the disposition by a foreign partner of an interest in a domestic or foreign partnership in which fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents. For purposes of this paragraph cash equivalents mean any asset readily convertible into cash (whether or not denominated in U.S. dollars), including, but not limited to, bank accounts, certificates of deposit, money market accounts, commercial paper, U.S. and foreign treasury obligations and bonds, corporate obligations and bonds, precious metals or commodities, and publicly traded instruments. The taxpayer on filing an income tax return for the year of the disposition may demonstrate the extent to which the gain on the disposition of the interest is not attributable to U.S. real property interests. A taxpayer is also permitted by § 1.1445-3 to apply for a withholding certificate in instances where reduced withholding is appropriate.

(2) *Withholding not required—(i) Transferee receives statement that interest in partnership is not described in paragraph (d)(1).* No withholding is required under paragraph (d)(1) of this section upon the disposition of a partnership interest otherwise described in that paragraph if the transferee is provided a statement, issued by the partnership and signed by a general partner under penalties of perjury no earlier than 30 days before the transfer, certifying that fifty percent or more of the value of the gross assets does not consist of U.S. real property interests, or that ninety percent or more of the value of the gross assets of the partnership does not consist of U.S. real property interests plus cash or cash equivalents.

(ii) *Reliance on statement not permitted.* A transferee is not entitled to rely upon a statement described in paragraph (d)(2)(i) of this section if, prior to or at the time of the transfer, the transferee either—

(A) Has actual knowledge that the statement is false, or

(B) Receives a notice, pursuant to § 1.1445-4.

Such a transferee's withholding obligations shall apply as if the statement had never been given, and such a transferee may be held fully liable pursuant to § 1.1445-1(e) for any failure to withhold.

(iii) *Belated notice of false statement.* If, after the date of the transfer, a transferee receives notice that a statement provided under paragraph (d)(2)(i) of this section is false, then such transferee may rely on the statement only with respect to consideration that was paid prior to the receipt of the notice. Such a transferee is required to withhold a full 10 percent of the amount realized from the consideration that remains to be paid to the transferor. Thus, if 10 percent or more of the amount realized remains to be paid to the transferor, then the transferee is required to withhold and pay over the full 10 percent. The transferee must do so by withholding and paying over the entire amount of each successive payment of consideration to the transferor, until the full 10 percent of the amount realized has been withheld and paid over. Amounts so withheld must be reported and paid over by the 20th day following the date on which each such payment of consideration is made. A transferee that is subject to the rules of this § 1.1445-10T(d)(2)(iii) may not obtain a withholding certificate pursuant to § 1.1445-3, but must instead withhold and pay over the amounts required by this paragraph.

(e) *Effective date.* The rules of this section are effective for transactions after June 6, 1988.

[T.D. 8198, 53 FR 16231, May 5, 1988]

TAX-FREE COVENANT BONDS

§ 1.1451-1 Tax-free covenant bonds issued before January 1, 1934.

(a) *Rates of withholding—(1) Rate of 2 percent.* Withholding of a tax equal to 2 percent is required in the case of interest upon bonds or other corporate obligations containing a tax-free covenant and issued before January 1, 1934, paid to an individual, a fiduciary, or a partnership, whether resident or nonresident, or to a nonresident foreign corporation, regardless of whether the

liability assumed by the obligor is less than, equal to, or greater than 2 percent.

(2) *Rate of 30 percent.* Notwithstanding subparagraph (1) of this paragraph, if the liability assumed by the obligor does not exceed 2 percent of the interest, withholding is required at the rate of 30 percent in the case of payments to a nonresident alien individual, a nonresident partnership composed in whole or in part of nonresident aliens, a nonresident foreign corporation, or an owner who is unknown to the withholding agent.

(3) *Obligations of resident payers.* The rates of withholding specified in subparagraphs (1) and (2) of this paragraph are applicable to interest on such tax-free covenant bonds issued by a domestic corporation or by a resident foreign corporation.

(4) *Obligations of nonresident payers.* A nonresident foreign corporation having a fiscal or paying agent in the United States is required to withhold a tax of 2 percent in the case of interest upon its tax-free covenant bonds issued before January 1, 1934, which is paid to an individual or fiduciary who is a citizen or resident of the United States, to a partnership any member of which is a citizen or resident, or to an unknown owner.

(5) *Interest from sources without the United States.* Withholding is not required under section 1451 in the case of interest upon bonds or other corporate obligations issued before January 1, 1934, and containing a tax-free covenant if the interest is not to be treated as income from sources within the United States and the payments are made to a nonresident alien, a partnership composed wholly of nonresident aliens, or a nonresident foreign corporation.

(6) *Tax treaties.* The rates of tax to be withheld in accordance with this paragraph shall be reduced as may be provided by treaty with any country. See section 894 and § 1.1441-6 relating to income subject to a reduced rate of, or an exemption from, income tax pursuant to an income tax convention.

(b) *Date of issue.* The withholding provisions of section 1451 are applicable only to bonds, mortgages, or deeds of trust, or other similar obligations of a