

§ 1.1441-7

26 CFR Ch. I (4-1-14 Edition)

this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(j) *Expiration date.* The applicability of this section expires on February 28, 2017.

[T.D. 9658, 79 FR 12780, Mar. 6, 2014]

§ 1.1441-7 General provisions relating to withholding agents.

(a) *Withholding agent defined—(1) In general.* For purposes of chapter 3 of the Internal Revenue Code and the regulations under such chapter, the term *withholding agent* means any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding, including (but not limited to) a foreign intermediary described in § 1.1441-1(e)(3)(i), a foreign partnership, or a U.S. branch described in § 1.1441-1(b)(2)(iv)(A) or (E). See §§ 1.1441-1(b)(2) and (3) and 1.1441-5(c), (d), and (e), for rules to determine whether a payment is considered made to a foreign person. Any person who meets the definition of a withholding agent is required to deposit any tax withheld under § 1.1461-1(a) and to make the returns prescribed by § 1.1461-1(b) and (c), except as otherwise may be required by a qualified intermediary withholding agreement, a withholding foreign partnership agreement, or a withholding foreign trust agreement. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and deposited. See § 1.1461-1. A person who, as a nominee described in § 1.6031(c)-1T, has furnished to a partnership all of the information required to be furnished under § 1.6031(c)-1T(a) shall not be treated as a withholding agent if it has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(2) *Withholding agent with respect to dividend equivalents.* Each person that is a party to any contract or arrangement that provides for the payment of a dividend equivalent, as described in section 871(m) and the regulations thereunder, is treated as having control and custody of the payment.

(3) *Examples.* The following examples illustrate the rules of paragraphs (a)(1) and (a)(2) of this section:

Example 1. USB is a broker organized in the United States. USB pays U.S. source dividends and interest, which are amounts subject to withholding under § 1.1441-2(a), to FC, a foreign corporation that has an investment account with USB. USB is a withholding agent as defined in paragraph (a)(1) of this section.

Example 2. USB is a bank organized in the United States. FB is a bank organized in country X. FB has an omnibus account with USB through which FB invests in debt and equity instruments that pay amounts subject to withholding as defined in § 1.1441-2(a). FB is a nonqualified intermediary, as defined in § 1.1441-1(c)(14). Both USB and FB are withholding agents as defined in paragraph (a)(1) of this section.

Example 3. The facts are the same as in *Example 2*, except that FB is a qualified intermediary. Both USB and FB are withholding agents as defined in paragraph (a)(1) of this section.

Example 4. FB is a bank organized in country X. FB has a branch in the United States. FB's branch has customers that are foreign persons who receive amounts subject to withholding, as defined in § 1.1441-2(a). FB is a withholding agent under paragraph (a)(1) of this section and is required to withhold and report payments of amounts subject to withholding in accordance with chapter 3 of the Internal Revenue Code.

Example 5. X is a foreign corporation. X pays dividends to shareholders who are foreign persons. Under section 861(a)(2)(B), a portion of the dividends are from sources within the United States and constitute amounts subject to withholding within the meaning of § 1.1441-2(a). The dividends are not subject to tax under section 884(a). See section 884(e)(3). X is a withholding agent under paragraph (a)(1) of this section.

Example 6. FC, a foreign corporation, enters into a notional principal contract (NPC) with Bank X, a bank organized in the United States. The NPC is a specified NPC for purposes of section 871(m) and the regulations thereunder. FC is the long party to the contract and Bank X is the short party. The NPC references a specified number of shares of dividend-paying common stock issued by a domestic corporation. As the long party, FC receives payments from Bank X based on any appreciation in the value of the common stock and dividends paid with respect to the common stock. As the short party, Bank X receives payment from FC based on any depreciation in the value of the common stock and a payment based on LIBOR. Bank X is a withholding agent because Bank X is deemed to have control and custody of a dividend equivalent as a party to the NPC. If FC's tax

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liability under section 881 has not been satisfied in full by Bank X as withholding agent, FC is required to file a return on Form 1120-F (U.S. Income Tax Return of a Foreign Corporation).

(4) *Effective/applicability date.* Paragraph (a)(2) of this section and *Example 6* apply on or after January 23, 2012.

(b) [Reserved] For further guidance, see § 1.1441-7T(b).

(c) [Reserved] For further guidance, see § 1.1441-7T(c).

(d) *United States obligations.* If the United States is a withholding agent for an item of interest, including original issue discount, on obligations of the United States or of any agency or instrumentality thereof, the withholding obligation of the United States is assumed and discharged by—

(1) The Commissioner of the Public Debt, for interest paid by checks issued through the Bureau of the Public Debt;

(2) The Treasurer of the United States, for interest paid by him or her, whether by check or otherwise;

(3) Each Federal Reserve Bank, for interest paid by it, whether by check or otherwise; or

(4) Such other person as may be designated by the IRS.

(e) *Assumed obligations.* If, in connection with the sale of a corporation's property, payment on the bonds or other obligations of the corporation is assumed by a person, then that person shall be a withholding agent to the extent amounts subject to withholding are paid to a foreign person. Thus, the person shall withhold such amounts under § 1.1441-1 as would be required to be withheld by the seller or corporation had no such sale or assumption been made.

(f) *Conduit financing arrangements—(1) Liability of withholding agent.* Subject to paragraph (f)(2) of this section, any person that is required to deduct and withhold tax under § 1.1441-3(g) is made liable for that tax by section 1461. A person that is required to deduct and withhold tax but fails to do so is liable for the payment of the tax and any applicable penalties and interest.

(2) *Exception for withholding agents that do not know of conduit financing arrangement—(i) In general.* A withholding agent will not be liable under paragraph (f)(1) of this section for failing to

deduct and withhold with respect to a conduit financing arrangement unless the person knows or has reason to know that the financing arrangement is a conduit financing arrangement. This standard shall be satisfied if the withholding agent knows or has reason to know of facts sufficient to establish that the financing arrangement is a conduit financing arrangement, including facts sufficient to establish that the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan. A withholding agent that knows only of the financing transactions that comprise the financing arrangement will not be considered to know or have reason to know of facts sufficient to establish that the financing arrangement is a conduit financing arrangement.

(ii) [Reserved] For further guidance, see § 1.1441-7T(f)(2)(ii).

(3) *Effective date.* This paragraph (f) is effective for payments made by financed entities on or after September 11, 1995. This paragraph shall not apply to interest payments covered by section 127(g)(3) of the Tax Reform Act of 1984, and to interest payments with respect to other debt obligations issued prior to October 15, 1984 (whether or not such debt was issued by a Netherlands Antilles corporation).

(g) *Effective/applicability date.* Except as otherwise provided in paragraphs (a)(4) and (f)(3) of this section, this section applies to payments made after December 31, 2000.

(h) [Reserved] For further guidance, see § 1.1441-7T(h).

[T.D. 7977, 49 FR 36834, Sept. 20, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.1441-7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 1.1441-7T General provisions relating to withholding agents (temporary).

(a) [Reserved] For further guidance, see § 1.1441-7(a).

(b) *Standards of knowledge—(1) In general.* A withholding agent must withhold at the full 30-percent rate under section 1441, 1442, or 1443(a) or at the full 4-percent rate under section 1443(b) if it has actual knowledge or reason to