

withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

[T.D. 8734, 62 FR 53465, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72185, Dec. 31, 1998; T.D. 8856, 64 FR 73410, Dec. 10, 1999; T.D. 8881, 65 FR 32201, May 22, 2000]

**§ 1.1441-10 Withholding agents with respect to fast-pay arrangements.**

(a) *In general.* A corporation that issues fast-pay stock in a fast-pay arrangement described in § 1.7701(l)-3(b)(1) is a withholding agent with respect to payments made on the fast-pay stock and payments deemed made under the recharacterization rules of § 1.7701(l)-3. Except as provided in this paragraph (a) or in paragraph (b) of this section, the withholding tax rules under section 1441 and section 1442 apply with respect to a fast-pay arrangement described in § 1.7701(l)-3(c)(1)(i) in accordance with the recharacterization rules provided in § 1.7701(l)-3(c). In all cases, notwithstanding paragraph (b) of this section, if at any time the withholding agent knows or has reason to know that the Commissioner has exercised the discretion under either § 1.7701(l)-3(c)(1)(ii) to apply the recharacterization rules of § 1.7701(l)-3(c), or § 1.7701(l)-3(d) to depart from the recharacterization rules of § 1.7701(l)-3(c) for a taxpayer, the withholding agent must withhold on payments made (or deemed made) to that taxpayer in accordance with the characterization of the fast-pay arrangement imposed by the Commissioner under § 1.7701(l)-3.

(b) *Exception.* If at any time the withholding agent knows or has reason to know that any taxpayer entered into a fast-pay arrangement with a principal

purpose of applying the recharacterization rules of § 1.7701(l)-3(c) to avoid tax under section 871(a) or section 881, then for each payment made or deemed made to such taxpayer under the arrangement, the withholding agent must withhold, under section 1441 or section 1442, the higher of—

(1) The amount of withholding that would apply to such payment determined under the form of the arrangement; or

(2) The amount of withholding that would apply to deemed payments determined under the recharacterization rules of § 1.7701(l)-3(c).

(c) *Liability.* Any person required to deduct and withhold tax under this section is made liable for that tax by section 1461, and is also liable for applicable penalties and interest for failing to comply with section 1461.

(d) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* REIT W issues shares of fast-pay stock to foreign individual A, a resident of Country C. United States source dividends paid to residents of C are subject to a 30 percent withholding tax. W issues all shares of benefited stock to foreign individuals who are residents of Country D. D's income tax convention with the United States reduces the United States withholding tax on dividends to 15 percent. Under § 1.7701(l)-3(c), the dividends paid by W to A are deemed to be paid by W to the benefited shareholders. W has reason to know that A entered into the fast-pay arrangement with a principal purpose of using the recharacterization rules of § 1.7701(l)-3(c) to reduce United States withholding tax. W must withhold at the 30 percent rate because the amount of withholding that applies to the payments determined under the form of the arrangement is higher than the amount of withholding that applies to the payments determined under § 1.7701(l)-3(c).

*Example 2.* The facts are the same as in *Example 1* of this paragraph (d) except that W does not know, or have reason to know, that A entered into the arrangement with a principal purpose of using the recharacterization rules of § 1.7701(l)-3(c) to reduce United States withholding tax. Further, the Commissioner has not exercised the discretion under § 1.7701(l)-3(d) to depart from the recharacterization rules of § 1.7701(l)-3(c). Accordingly, W must withhold tax at a 15 percent rate on the dividends deemed paid to the benefited shareholders.

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(e) *Effective date.* This section applies to payments made (or deemed made) on or after January 6, 1999.

[T.D. 8853, 65 FR 1312, Jan. 10, 2000]

**§ 1.1442-1 Withholding of tax on foreign corporations.**

For regulations concerning the withholding of tax at source under section 1442 in the case of foreign corporations, foreign governments, international organizations, foreign tax-exempt corporations, or foreign private foundations, see §§ 1.1441-1 through 1.1441-9.

[T.D. 8734, 62 FR 53466, Oct. 14, 1997]

**§ 1.1442-2 Exemption under a tax treaty.**

For regulations providing for a claim of reduced withholding tax under section 1442 by certain foreign corporations pursuant to the provisions of an income tax treaty, see § 1.1441-6.

[T.D. 8734, 62 FR 53466, Oct. 14, 1997]

**§ 1.1442-3 Tax exempt income of a foreign tax-exempt corporation.**

For regulations providing for a claim of exemption for income exempt from tax under section 501(a) of a foreign tax-exempt corporation, see § 1.1441-9. See § 1.1443-1 for withholding rules applicable to foreign private foundations and to the unrelated business income of foreign tax-exempt organizations.

[T.D. 8734, 62 FR 53466, Oct. 14, 1997]

**§ 1.1443-1 Foreign tax-exempt organizations.**

(a) *Income includible in computing unrelated business taxable income.* In the case of a foreign organization that is described in section 501(c), amounts paid or effectively connected taxable income allocable to the organization that are includible under section 512 and section 513 in computing the organization's unrelated business taxable income are subject to withholding under §§ 1.1441-1, 1.1441-4, 1.1441-6, and 1.1446-1 through 1.1446-6, in the same manner as payments or allocations of effectively connected taxable income of the same amounts made to any foreign person that is not a tax-exempt organization. Therefore, a foreign organization receiving amounts includible

under section 512 and section 513 in computing the organization's unrelated business taxable income may claim an exemption from withholding or a reduced rate of withholding with respect to that income in the same manner as a foreign person that is not a tax-exempt organization. See § 1.1441-9(b)(3) for a presumption that amounts are includible under section 512 and section 513 in computing the organization's unrelated business taxable income in the absence of reliable certification. See also § 1.1446-3(c)(3), applying this presumption in the context of section 1446.

(b) *Income subject to tax under section 4948—(1) In general.* The gross investment income (as defined in section 4940(c)(2)) of a foreign private foundation is subject to withholding under section 1443(b) at the rate of 4 percent to the extent that the income is from sources within the United States and is subject to the tax imposed by section 4948(a) and the regulations under that section. Withholding under this paragraph (b) is required irrespective of the fact that the income may be effectively connected with the conduct of a trade or business in the United States by the foreign organization. See § 1.1441-9(b)(3) for applicable presumptions that amounts are subject to tax under section 4948. The withholding imposed under this paragraph (b)(1) does not obviate a private foundation's obligation to file any return required by law with respect to such organization, such as the form that the foundation is required to file under section 6033 for the taxable year.

(2) *Reliance on a foreign organization's claim of foreign private foundation status.* For reliance by a withholding agent on a foreign organization's claim of foreign private foundation status, see § 1.1441-9 (b) and (c).

(3) *Applicable procedures.* A withholding agent withholding the 4-percent amount pursuant to paragraph (b)(1) of this section shall treat such withholding as withholding under section 1441(a) or 1442(a) for all purposes, including reporting of the payment on a Form 1042 and a Form 1042-S pursuant to § 1.1461-1 (b) and (c). Similarly, the foreign private foundation shall treat the 4-percent withholding as withholding under section 1441(a) or