

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### ADMINISTRATIVE, EXEMPT ORGANIZATIONS, INCOME TAX

#### **REG-106134-22, page 660.**

These proposed regulations identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions per §1.6011-4(b)(2). Material advisors and certain participants in these listed transactions are required to disclose their participation to the IRS and are subject to penalties for failure to disclose. In addition, while the proposed regulations exclude qualified organizations from being treated as participants, material advisors, or parties to a prohibited tax shelter transaction subject to excise tax, these proposed regulations request comments on whether the final regulations should remove the exclusion from the application of the excise tax for qualified organizations that continue to facilitate syndicated conservation easement transactions.

### ADMINISTRATIVE, INCOME TAX

#### **Rev. Proc. 2022-43, page 570.**

This Revenue Procedure sets forth the final qualified intermediary (QI) withholding agreement (QI agreement) entered into by the Internal Revenue Service and certain foreign persons under Treas. Reg. § 1.1441-1(e) (5) and (6). The QI agreement currently in effect in Rev. Proc. 2017-15, 2017-3 I.R.B. 437, expires on December 31, 2022 (the 2017 QI Agreement). This Revenue Procedure will apply beginning January 1, 2023, with a six-year term (the 2023 QI Agreement). In general, the QI agreement allows certain persons to enter into an agreement with the IRS to simplify their obligations as

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withholding agents under chapters 3 and 4 and as payors under chapter 61 and section 3406 for amounts paid to their account holders. The QI agreement also allows certain foreign persons to act as qualified derivatives dealers (QDDs) and assume primary withholding and reporting responsibilities on dividend equivalent payments made in a principal capacity for purposes of section 871(m). Additionally, the 2023 QI Agreement allows foreign persons to enter into the agreement for purposes of the withholding and reporting required under sections 1446(a) and (f) with respect to their account holders holding interests in publicly traded partnerships.

### ADMINISTRATIVE, SPECIAL ANNOUNCEMENT

#### **Announcement 2022-28, page 659.**

This announcement is being released in conjunction with proposed regulations identifying certain syndicated conservation easement transactions as listed transactions. The announcement explains that the regulations are being proposed in light of certain court decisions holding that the APA requires the IRS to identify listed transactions through notice-and-comment rulemaking, and that the IRS intends to issue further regulations identifying other listed transactions, to be finalized in 2023.

### INCOME TAX

#### **Notice 2022-61, page 560.**

This notice provides guidance on the prevailing wage and apprenticeship requirements that generally apply to

certain provisions of the Internal Revenue Code (Code), as amended by the Inflation Reduction Act of 2022. This notice also serves as the published guidance establishing the 60-day period described in those provisions of the Code with respect to the applicability of the prevailing wage and apprenticeship requirements. Finally, this notice provides guidance for determining the beginning of construction of a facility for certain credits allowed under the Code, and the beginning of installation of certain property with respect to the energy efficient commercial buildings deduction under the Code.

**REG-113839-22, page 673.**

This document contains proposed regulations that treat members of a consolidated group as a single United States shareholder in certain cases for purposes of section 951(a)(2)(B) of the Internal Revenue Code.

**Rev. Proc. 2022-42, page 565.**

This revenue procedure sets forth the procedures under § 30D(d)(3) for qualified manufacturers to enter into a written agreement with the Secretary under which such a manufacturer agrees to make periodic written reports to the Secretary providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require. Vehicles eligible for the credit for qualified commercial vehicles under § 45W and vehicles eligible for the credit for previously owned clean vehicles under § 25E must be manufactured by a qualified manufacturer as defined in § 30D(d)(3). See §§ 45W(c)(1) and 25E(c)(1)(D)(i). This revenue procedure also provides the procedures for persons selling vehicles to report the information required to the IRS in order for a vehicle to be eligible for the clean vehicle credit under §§ 30D and 25E.

# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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# Part III

## Prevailing Wage and Apprenticeship Initial Guidance under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions

### Notice 2022-61

This notice provides guidance on the prevailing wage and apprenticeship requirements that generally apply to certain provisions of the Internal Revenue Code (Code), as amended by the Inflation Reduction Act of 2022. This notice also serves as the published guidance establishing the 60-day period described in those provisions of the Code with respect to the applicability of the prevailing wage and apprenticeship requirements. Finally, this notice provides guidance for determining the beginning of construction of a facility for certain credits allowed under the Code, and the beginning of installation of certain property with respect to the energy efficient commercial buildings deduction under the Code. This notice affects facilities the construction of which began, or certain property the installation of which began, on or after January 29, 2023. The Department of the Treasury (Treasury Department) and the IRS anticipate issuing proposed regulations and other guidance with respect to the prevailing wage and apprenticeship requirements.

**DATES:** January 29, 2023 is the date that is 60 days after the Secretary of the Treasury or her delegate (Secretary) publishes the guidance described in 26 U.S.C. 30C(g)(1)(C)(i), 45(b)(6)(B)(ii), 45Q(h)(2), 45V(e)(2)(A)(i), 45Y(a)(2)(B)(ii), 48(a)(9)(B)(ii), 48E(a)(2)(A)(ii)(II) and (a)(2)(B)(ii)(II), and 179D(b)(3)(B)(i).

**FOR FURTHER INFORMATION CONTACT:** Alexander Scott, CC:PSI:6, Internal Revenue Service, 1111

Constitution Avenue NW, Washington, DC 20224, at (202) 317-6853 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### SECTION 1. PURPOSE

Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Internal Revenue Code (Code) to add prevailing wage and apprenticeship requirements to qualify for increased credit or deduction amounts.<sup>1</sup> This notice provides guidance on the prevailing wage and apprenticeship requirements that generally apply to those sections of the Code. This notice also serves as the published guidance under §§ 30C(g)(1)(C)(i), 45(b)(6)(B)(ii), 45Q(h)(2), 45V(e)(2)(A)(i), 45Y(a)(2)(B)(ii), 48(a)(9)(B)(ii), 48E(a)(2)(A)(ii)(II) and (a)(2)(B)(ii)(II), and 179D(b)(3)(B)(i) establishing the 60-day period described in such sections with respect to the applicability of the prevailing wage and apprenticeship requirements. Finally, this notice provides guidance for determining the beginning of construction under §§ 30C, 45, 45Q, 45V, 45Y, 48, and 48E, and the beginning of installation under § 179D solely for purposes of § 179D(b)(3)(B)(i).

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate issuing proposed regulations and other guidance with respect to the prevailing wage and apprenticeship requirements.

##### SECTION 2. BACKGROUND

.01 *Increased Tax Benefits For Satisfying Certain Prevailing Wage and Apprenticeship or Construction and Installation Requirements.*

(1) *In General.* Increased credit amounts are available under §§ 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E,

and an increased deduction is available under § 179D, for taxpayers satisfying certain prevailing wage and apprenticeship requirements. Increased credit amounts are available under §§ 45L and 45U for taxpayers satisfying certain prevailing wage requirements. The general concepts and provisions relating to the increased tax benefits under § 45(b)(6), (7), and (8) are similar to those under each of these other Code sections. Therefore, only the relevant provisions under § 45(b)(6), (7), and (8) are discussed in section 2.01(2) and (3) of this notice.

(2) *Prevailing Wage Requirements.* Section 45(b)(7)(A) provides that to meet the prevailing wage requirements with respect to any qualified facility, a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in: (i) the construction of such facility, and (ii) the alteration or repair of such facility (with respect to any taxable year, for any portion of such taxable year that is within the 10-year period beginning on the date the qualified facility is originally placed in service), are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code (Prevailing Wage Rate Requirements). Section 45(b)(7)(B) provides correction and penalty mechanisms for a taxpayer's failure to satisfy the requirements under § 45(b)(7)(A).

(3) *Apprenticeship Requirements.* Section 45(b)(8)(A)(i) provides that to meet the apprenticeship requirements taxpayers must ensure that, with respect to the construction of any qualified facility, not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility is, subject to § 45(b)(8)(B), performed by qualified apprentices (Apprenticeship

<sup>1</sup> See §§ 13101(f), 13102(k), 13104(d), 13105(a), 13204(a)(1), 13303(a)(1), 13304(d), 13404(d), 13501(a), 13701(a), 13702(a), and 13704(a) of the IRA.

Labor Hour Requirements). Under § 45(b)(8)(A)(ii), for purposes of § 45(b)(8)(A)(i), the applicable percentage is: (i) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent, (ii) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and (iii) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Section 45(b)(8)(B) provides that the requirement under § 45(b)(8)(A)(i) is subject to any applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency (Apprenticeship Ratio Requirements). Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs 4 or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ 1 or more qualified apprentices to perform such work (Apprenticeship Participation Requirements).

Under § 45(b)(8)(D)(i), a taxpayer is not treated as failing to satisfy the requirements of § 45(b)(8) if: (i) the taxpayer satisfies the requirements described in § 45(b)(8)(D)(ii) (Good Faith Effort Exception), or (ii) subject to § 45(b)(8)(D)(iii) (Intentional Disregard Provision), in the case of any failure by the taxpayer to satisfy the requirement under § 45(b)(8)(A) and (C) with respect to the construction, alteration, or repair work on any qualified facility to which § 45(b)(8)(D)(i) (I) does not apply, the taxpayer makes payment to the Secretary of the Treasury or her delegate (Secretary) of a penalty in an amount equal to the product of \$50 multiplied by the total labor hours for which the requirement described in § 45(b)(8)(A) and (C) was not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

Under the Good Faith Effort Exception described in § 45(b)(8)(D)(ii), a taxpayer is deemed to have satisfied the apprenticeship requirements with respect to a qualified facility if the taxpayer has requested qualified apprentices from a registered apprenticeship program, as defined in § 3131(e)(3)(B), and: (i) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or (ii) the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request.

Under the Intentional Disregard Provision, if the Secretary determines that any failure described in § 45(b)(8)(D)(i) (II) is due to intentional disregard of the requirements under § 45(b)(8)(A) and (C), § 45(b)(8)(D)(i)(II) is applied by substituting “\$500” for “\$50.”

Under § 45(b)(8)(E)(i), the term “labor hours” means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor. This term excludes any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).

Under § 45(b)(8)(E)(ii), the term “qualified apprentice” means an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in § 3131(e)(3)(B).

Section 3131(e)(3)(B) defines a registered apprenticeship program as an apprenticeship registered under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act, 50 Stat. 664, chapter 663, 29 U.S.C. 50 *et seq.*) that meets the standards of subpart A of part 29 and part 30 of title 29 of the Code of Federal Regulations.<sup>2</sup>

#### .02 *Beginning of Construction.*

(1) *In General.* A qualified facility, property, project, or equipment, are hereafter referred to as a “facility” in this notice. A facility generally must meet the prevailing wage and apprenticeship requirements to receive the increased credit or deduction amounts under §§ 30C, 45, 45Q, 45V, 45Y, 48, 48E, and 179D if construction (or installation for purposes of § 179D) of the facility begins on or after the date 60 days after the Secretary publishes guidance with respect to the prevailing wage and apprenticeship requirements of the Code.<sup>3</sup> The IRS has issued notices under §§ 45,<sup>4</sup> 45Q,<sup>5</sup> and 48<sup>6</sup> (collectively, IRS Notices) that provide guidance for determining when construction begins for purposes of §§ 45, 45Q, and 48, respectively, including a safe harbor regarding the continuity requirement (described in section 2.02(3) of this notice).

(2) *Establishing Beginning of Construction.* The IRS Notices describe two methods that a taxpayer may use to establish that construction of a facility begins: (i) by starting physical work of a significant nature (Physical Work Test), and (ii) by paying or incurring five percent or more of the total cost of the facility (Five Percent Safe Harbor).

(i) *Physical Work Test.* Under the Physical Work Test, construction of a facility begins when physical work of a significant nature begins, provided that the taxpayer maintains a continuous program of construction. This test focuses on the nature of the work performed, not the amount or the costs. Assuming the work performed

<sup>2</sup>Effective November 25, 2022, 29 C.F.R. part 29 is no longer divided into subparts A and B because subpart B (Industry Recognized Apprenticeship Programs) was rescinded in a final rule published on September 26, 2022. See 87 F.R. 58269.

<sup>3</sup>Certain facilities are exempt from the prevailing wage and apprenticeship requirements. See, for example, § 45(b)(6)(B)(i).

<sup>4</sup>Notice 2013-29, 2013-20 I.R.B. 1085; clarified by Notice 2013-60, 2013-44 I.R.B. 431; clarified and modified by Notice 2014-46, 2014-36 I.R.B. 520; updated by Notice 2015-25, 2015-13 I.R.B. 814; clarified and modified by Notice 2016-31, 2016-23 I.R.B. 1025; updated, clarified, and modified by Notice 2017-04, 2017-4 I.R.B. 541; Notice 2018-59, 2018-28 I.R.B. 196; modified by Notice 2019-43, 2019-31 I.R.B. 487; modified by Notice 2020-41, 2020-25 I.R.B. 954; clarified and modified by Notice 2021-5, 2021-3 I.R.B. 479; clarified and modified by Notice 2021-41, 2021-29 I.R.B. 17.

<sup>5</sup>Notice 2020-12, 2020-11 I.R.B. 495.

<sup>6</sup>Notice 2018-59, 2018-28 I.R.B. 196; modified by Notice 2019-43; modified by Notice 2020-41; clarified and modified by Notice 2021-5; clarified and modified by Notice 2021-41.

is of a significant nature, there is no fixed minimum amount of work or monetary or percentage threshold required to satisfy the Physical Work Test. Physical work of significant nature does not include preliminary activities, even if the cost of those preliminary activities is properly included in the depreciable basis of the facility.<sup>7</sup> For purposes of the Physical Work Test, preliminary activities include, but are not limited to, planning or designing, securing financing, exploring, researching, obtaining permits, licensing, conducting surveys, environmental and engineering studies, or clearing a site.<sup>8</sup>

Work performed by the taxpayer and work performed for the taxpayer by other persons under a binding written contract<sup>9</sup> that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in the taxpayer's trade or business (or for the taxpayer's production of income) is taken into account in determining whether construction has begun.<sup>10</sup> Both on-site and off-site work (performed either by the taxpayer or by another person under a binding written contract) may be taken into account for purposes of demonstrating that physical work of a significant nature has begun. Physical work of a significant nature does not include work (performed either by the taxpayer or by another person under a binding written contract) to produce property that is either in existing inventory or is normally held in inventory by a vendor.<sup>11</sup>

(ii) *Five Percent Safe Harbor.* Under the Five Percent Safe Harbor, construction of a facility will be considered as having begun if: (i) a taxpayer pays or incurs (within the meaning of § 1.461-1(a)(1) and (2)) five percent or more of the total cost of the facility, and (ii) thereafter, the taxpayer makes continuous efforts to advance

towards completion of the facility. All costs properly included in the depreciable basis of the facility are taken into account to determine whether the Five Percent Safe Harbor has been met.<sup>12</sup> For property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract with the taxpayer, costs incurred with respect to the property by the other person before the property is provided to the taxpayer are deemed incurred by the taxpayer when the costs are incurred by the other person under the principles of § 461.<sup>13</sup>

(3) *Continuity Requirement and Continuity Safe Harbor.* The IRS Notices, as clarified and modified by Notice 2021-41, provide that for purposes of the Physical Work Test and Five Percent Safe Harbor, taxpayers must demonstrate either continuous construction or continuous efforts (Continuity Requirement) regardless of whether the Physical Work Test or the Five Percent Safe Harbor was used to establish the beginning of construction. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances. The IRS will closely scrutinize a facility and may determine that the beginning of construction is not satisfied with respect to a facility if a taxpayer does not meet the Continuity Requirement.

The IRS Notices, as subsequently modified and clarified, also provide for a "Continuity Safe Harbor" under which a taxpayer will be deemed to satisfy the Continuity Requirement provided a qualified facility is placed in service no more than four calendar years after the calendar year during which construction of the qualified facility began for purposes of §§ 45<sup>14</sup> and 48,<sup>15</sup> and no more than six calendar years after the calendar year during which construction of the qualified facility or carbon

capture equipment began for purposes of § 45Q.<sup>16</sup> Certain offshore projects and projects built on federal land under §§ 45 and 48 satisfy the Continuity Requirement if such a project is placed into service no more than 10 calendar years after the calendar year during which construction of the project began.<sup>17</sup>

#### .03 *Recordkeeping.*

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe. Section 1.6001-1(a) provides that any person subject to income tax must keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax. Section 1.6001-1(e) provides that the books and records required by § 1.6001-1 must be retained so long as the contents thereof may become material in the administration of any internal revenue law.

Section 45(b)(12) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of § 45(b), including regulations or other guidance that provide requirements for recordkeeping or information reporting for purposes of administering the requirements of § 45(b).<sup>18</sup>

### **SECTION 3. GUIDANCE WITH RESPECT TO PREVAILING WAGE RATE REQUIREMENTS**

.01 *How to Satisfy Prevailing Wage Rate Requirements.* The Prevailing Wage Rate Requirements under § 45(b)(7)(A) and the substantially similar provisions set forth in §§ 30C, 45L, 45Q, 45U, 45V,

<sup>7</sup> For § 45, see Notice 2013-29, section 4.02(1); Notice 2016-31, section 5.03; for § 45Q, see Notice 2020-12, section 5.03; and for § 48, see Notice 2018-59, section 4.03.

<sup>8</sup> For § 45, see Notice 2013-29, section 4.02(1); Notice 2016-31, section 5.03; for § 45Q, see Notice 2020-12, section 5.03; and for § 48, see Notice 2018-59, section 4.03.

<sup>9</sup> For § 45, see Notice 2013-29, section 4.03(1); for § 45Q, see Notice 2020-12, section 8.02(1); for § 48, see Notice 2018-59, section 7.03(1).

<sup>10</sup> For § 45, see Notice 2013-29, sections 4.01 and 4.03; for § 45Q, see Notice 2020-12, section 8.02; and for § 48, see Notice 2018-59, section 7.03.

<sup>11</sup> For § 45, see Notice 2013-29, section 4.02(2); for § 45Q, see Notice 2020-12, section 5.04; and for § 48, see Notice 2018-59, section 4.04.

<sup>12</sup> For § 45, see Notice 2013-29, section 5.01(1); for § 48, see Notice 2018-59, section 5.02; and for § 45Q, see Notice 2020-12, section 6.02.

<sup>13</sup> For § 45, see Notice 2013-29, section 5.01(2); for § 48, see Notice 2018-59, section 7.03; for § 45Q, see Notice 2020-12, section 8.02.

<sup>14</sup> Notice 2016-31, section 3.

<sup>15</sup> Notice 2018-59, section 6.05.

<sup>16</sup> Notice 2020-12, section 7.05.

<sup>17</sup> Notice 2021-5. Projects under §§ 45 and 48 may also be eligible for the extended Continuity Safe Harbors provided for in Notices 2020-41 and 2021-41 due to the COVID-19 pandemic depending on when construction began with respect to those projects.

<sup>18</sup> See also §§ 30C(g)(4), 45L(g)(3), 45Q(h)(5), 45U(d)(3), 45V(e)(5), 45Y(f), 45Z(e), 48(a)(16), 48E(i), and 179D(b)(6).

45Y, 45Z, 48, 48C, 48E, and 179D will be satisfied if:

(1) The taxpayer satisfies the Prevailing Wage Rate Requirements with respect to any laborer or mechanic employed in the construction, alteration, or repair of a facility, property, project, or equipment by the taxpayer or any contractor or subcontractor of the taxpayer; and

(2) The taxpayer maintains and preserves sufficient records, including books of account or records for work performed by contractors or subcontractors of the taxpayer, to establish that such laborers and mechanics were paid wages not less than such prevailing rates, in accordance with the general recordkeeping requirements under § 6001 and § 1.6001-1, *et seq.*

.02 *Prevailing Wage Determinations.* If the Secretary of Labor has published on [www.sam.gov](http://www.sam.gov) a prevailing wage determination for the geographic area and type or types of construction applicable to the facility, including all labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics, that wage determination contains the prevailing rates for the laborers or mechanics who perform work on the facility as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code, as identified in § 45(b)(7)(A). The following procedures described in section 3.02 of this notice are designed to be used to request an unlisted classification only in the limited circumstance when no labor classification on the applicable prevailing wage determination applies to the planned work.

If the Secretary of Labor has not published a prevailing wage determination for the geographic area and type of construction for the facility on [www.sam.gov](http://www.sam.gov), or the Secretary of Labor has issued a prevailing wage determination for the geographic area and type of construction, but one or more labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics is not listed, then the taxpayer can rely on the procedures

established by the Secretary of Labor for purposes of the requirement to pay prevailing rates determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.<sup>19</sup> To rely on the procedures to request a wage determination or wage rate, and to rely on the wage determination or rate provided in response to the request, the taxpayer must contact the Department of Labor, Wage and Hour Division via email at [IRAprevailing-wage@dol.gov](mailto:IRAprevailing-wage@dol.gov) and provide the Wage and Hour Division with the type of facility, facility location, proposed labor classifications, proposed prevailing wage rates, job descriptions and duties, and any rationale for the proposed classifications. The taxpayer may use these procedures to request a wage determination, or wage rates for the unlisted classifications, applicable to the construction, alteration, or repair of the facility. After review, the Department of Labor, Wage and Hour Division will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the area in which the facility is located.

Questions regarding the applicability of a wage determination or its listed classifications and wage rates should be directed to the Department of Labor, Wage and Hour Division via email at [IRAprevailing-wage@dol.gov](mailto:IRAprevailing-wage@dol.gov).

For purposes of the Prevailing Wage Rate Requirements, the prevailing rate for qualified apprentices hired through a registered apprenticeship program may be less than the corresponding prevailing rate for journeyworkers of the same classification, as described in 29 C.F.R. 5.5(a)(4)(i).

For purposes of the Prevailing Wage Requirements for the § 179D deduction, the prevailing wage rate for installation of energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan, is determined with respect to the prevailing wage rate for construction, alteration, or repair of a similar character in the locality in which such property is located, as most recently determined by the Secretary of Labor, in

accordance with subchapter IV of chapter 31 of title 40, United States Code.

.03 *Definitions.* For purposes of the Prevailing Wage Rate Requirement and the associated recordkeeping requirements the following definitions apply.

(1) A taxpayer, contractor, or subcontractor is considered to “employ” an individual if the individual performs services for the taxpayer, contractor, or subcontractor in exchange for remuneration, regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes.

(2) The terms “wage” and “wages” means “wages” as defined under 29 C.F.R. 5.2(p), including any bona fide fringe benefits as defined therein.

(3) The term “laborer or mechanic” means “laborer or mechanic” as defined under 29 C.F.R. 5.2(m).

(4) The term “construction, alteration, or repair” means “construction, prosecution, completion, or repair” as defined under 29 C.F.R. 5.2(j).

(5) The term “prevailing wage” means the wage listed for a particular classification of laborer or mechanic on the applicable wage determination for the type of construction and the geographic area or other applicable wage as determined by the Secretary of Labor.

(6) The term “prevailing wage determination” means a wage determination issued by the Department of Labor and published on [www.sam.gov](http://www.sam.gov).<sup>20</sup>

#### .04 *Examples.*

(1) *Example 1.* A taxpayer employs laborers and mechanics to construct a facility. The taxpayer also uses a contractor and subcontractor to construct the facility. The Department of Labor has issued a prevailing wage determination that applies to the type of construction that the laborers and mechanics perform for the county in which the facility is located. The taxpayer ensures that the taxpayer, contractor, and subcontractor pay each laborer and mechanic a wage rate equal to the applicable rates for their respective labor classifications listed in this prevailing wage determination. The taxpayer maintains records that are sufficient to establish that the taxpayer and the taxpayer’s contractor and subcontractor paid wages not less than such prevailing wage rates. Such records include but are not limited to, identifying the applicable wage determination, the laborers and mechanics who performed construction work on the

<sup>19</sup> The taxpayer is not required to follow any other procedure to request a wage determination or a wage rate under § 45(b)(7)(A), including submission of the Form SF-1444.

<sup>20</sup> Prevailing wage determinations and the applicable procedures are described in section 3.02 of this notice, above.

facility, the classifications of work they performed, their hours worked in each classification, and the wage rates paid for the work. Under these facts, the taxpayer will be considered to have satisfied the Prevailing Wage Rate Requirements with respect to the facility.

(2) *Example 2.* The facts are the same as in Example 1, except that the Department of Labor has not issued an applicable prevailing wage determination for the relevant type of construction and geographic area in which the facility is being constructed. The taxpayer contacts the Department of Labor, Wage and Hour Division under the procedures described in section 3.02 of this notice. After review, the Department of Labor, Wage and Hour Division notifies the taxpayer as to the labor classifications and wage rates to be used for the type of construction work in question in the area in which the facility is located. The taxpayer ensures that the taxpayer, contractor, and subcontractor pay each laborer and mechanic a wage rate equal to the applicable rates for the respective classifications listed in this wage determination.

The taxpayer maintains records, which include the additional prevailing wage rates provided by the Department of Labor to establish that the taxpayer and the taxpayer's contractor and subcontractor paid wages not less than such prevailing wage rates. Under these facts, the taxpayer will be considered to have satisfied the Prevailing Wage Rate Requirements with respect to the facility.

(3) *Example 3.* The facts are the same as in Example 1, except that the Department of Labor has issued a prevailing wage determination that applies to the type of construction that the laborers and mechanics are hired to perform for the county in which the facility is located, but that wage determination does not include a classification of laborer or mechanic that will be used to complete the construction work on the facility (for example, electrician, carpenter, laborer, etc.). The taxpayer contacts the Department of Labor, Wage and Hour Division under the procedures described in section 3.02 of this notice. After review, including confirming that no labor classification on the applicable prevailing wage determination that applies to the work exists, the Department of Labor, Wage and Hour Division notifies the taxpayer as to the wage rate to be paid regarding the additional classification. The taxpayer ensures that the taxpayer, contractor, and subcontractor pay each laborer and mechanic a wage rate equal to the applicable rates for their respective labor classifications listed in the prevailing wage determination, including the additional wage rates provided by the Department of Labor.

The taxpayer maintains records, which include the additional wage rates provided by the Department of Labor to establish that the taxpayer and taxpayer's contractor and subcontractor paid wages not less than prevailing wage rates. Under these facts, the taxpayer will be considered to have satisfied the

Prevailing Wage Rate Requirements with respect to the facility.

#### **SECTION 4. GUIDANCE WITH RESPECT TO APPRENTICESHIP REQUIREMENTS**

.01 *How to Satisfy Apprenticeship Requirements.* A taxpayer satisfies the apprenticeship requirements described in § 45(b)(8) if:

(1) The taxpayer satisfies the Apprenticeship Labor Hour Requirements, subject to any applicable Apprenticeship Ratio Requirements;

(2) The taxpayer satisfies the Apprenticeship Participation Requirements; and

(3) The taxpayer complies with the general recordkeeping requirements under § 6001 and § 1.6001-1, including maintaining books of account or records for contractors or subcontractors of the taxpayer, as applicable, in sufficient form to establish that the Apprenticeship Labor Hour and the Apprenticeship Participation Requirements have been satisfied.

Under the Good Faith Effort Exception,<sup>21</sup> the taxpayer will be considered to have made a good faith effort in requesting qualified apprentices if the taxpayer requests qualified apprentices from a registered apprenticeship program in accordance with usual and customary business practices for registered apprenticeship programs in a particular industry.<sup>22</sup> Pursuant to § 6001 and § 1.6001-1, the taxpayer must maintain sufficient books and records establishing the taxpayer's request of qualified apprentices from a registered apprenticeship program and the program's denial of such request or non-response to such request, as applicable.

.02 *Definitions.* For purposes of the apprenticeship requirements the following definitions apply.

(1) A taxpayer, contractor, or subcontractor is considered to "employ" an individual if the individual performs services for the taxpayer, contractor, or subcontractor in exchange for remuneration, regardless of whether the individual would be characterized as an employee or

an independent contractor for other Federal tax purposes.<sup>23</sup>

(2) The term "journeyworker" means "journeyworker" as defined under 29 C.F.R. 29.2.

(3) The term "apprentice-to-journeyworker ratio" means the ratio described under 29 C.F.R. 29.5(b)(7).

(4) The term "construction, alteration, or repair" means "construction, prosecution, completion, or repair" as defined under 29 C.F.R. 5.2(j).

(5) The term "State Apprenticeship Agency" means "State Apprenticeship Agency" as defined under 29 C.F.R. 29.2.

.03 *Example.* A taxpayer employs workers and qualified apprentices to construct a new facility. Construction of the facility begins in calendar year 2023, and the construction of the facility is completed in calendar year 2023. To satisfy the apprenticeship labor hour requirement, the percentage of total labor hours to be performed by qualified apprentices is 12.5 percent for 2023. The total labor hours, as defined in § 45(b)(8)(E)(i), for the construction of the facility is 10,000 labor hours. The taxpayer employed qualified apprentices that performed a total of 1,150 hours of construction on the facility. On each day that a qualified apprentice performed construction work on the facility for the taxpayer, the applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency were met.

The taxpayer also hired a contractor to assist with construction of the facility for 1,000 labor hours of the 10,000 total labor hours. The contractor employed qualified apprentices that performed a total of 100 hours of construction on the facility. On each day that a qualified apprentice performed construction work on the facility for the contractor, the applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency were met.

The taxpayer ensured that the taxpayer and the contractor each employed 1 or more qualified apprentices because the taxpayer and contractor each employed 4 or more individuals to perform construction work on the qualified facility.

The taxpayer maintained sufficient records to establish that the taxpayer and the contractor hired by the taxpayer satisfied the Apprenticeship Labor Hour Requirement of 1,250 total labor hours for the facility (12.5% of 10,000 labor hours), and the Apprenticeship Ratio and Apprenticeship Participation Requirements. Under these facts, the taxpayer will be considered to have satisfied the Apprenticeship Labor Hour, Apprenticeship Ratio, and Apprenticeship Participation Requirements of the statute with respect to the facility.

<sup>21</sup> Described in section 2.01(3) of this notice, above.

<sup>22</sup> Registered apprenticeship programs can be located using the Office of Apprenticeship's partner finder tool, available at <https://www.apprenticeship.gov/partner-finder> and through the applicable State Apprenticeship Agency, <https://www.apprenticeship.gov/about-us/state-offices>.

<sup>23</sup> This definition does not alter any of the existing legal requirements pertaining to the proper classification of qualified apprentices in registered apprenticeship programs as employees for purposes of certain Federal laws and regulations.



## SECTION 5. DETERMINING WHEN CONSTRUCTION OR INSTALLATION BEGINS

To determine when construction begins for purposes of §§ 30C, 45V, 45Y, and 48E, principles similar to those under Notice 2013-29 regarding the Physical Work Test and Five Percent Safe Harbor apply, and taxpayers satisfying either test will be considered to have begun construction. In addition, principles similar to those provided in the IRS Notices regarding the Continuity Requirement for purposes of §§ 30C, 45V, 45Y, and 48E apply. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances.

Similar principles to those under section 3 of Notice 2016-31 regarding the Continuity Safe Harbor also apply for purposes of §§ 30C, 45V, 45Y, and 48E. Taxpayers may rely on the Continuity Safe Harbor provided the facility is placed in service no more than four calendar years after the calendar year during which construction began.

For purposes of § 179D, the IRS will accept that installation has begun if a taxpayer generally satisfies principles similar to the two tests described in section 2.02 of this notice, above, regarding the beginning of construction under Notice 2013-29 (Physical Work Test and Five Percent Safe Harbor). The relevant facts and circumstances will ultimately be determinative of whether a taxpayer has begun installation.

For purposes of §§ 45, 45Q, and 48, the IRS Notices will continue to apply under each respective Code section, including application of the Physical Work Test and Five Percent Safe Harbor, and the rules regarding the Continuity Requirement and Continuity Safe Harbors.<sup>24</sup>

## SECTION 6. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and

its attendant regulations, 5 C.F.R. part 1320, require an agency to consider the impact of paperwork and other information collection burdens imposed on the public. The IRA allows taxpayers to take certain increased credit amounts or an increased deduction if they satisfy the Prevailing Wage Requirements, and Apprenticeship Requirements, where applicable. The Department of Labor will collect the data needed to issue wage rates for taxpayers in connection with facilities whose construction, alteration, or repair is not subject to one or more Davis-Bacon and Related Acts (DBRA), as facilities subject to the DBRA are already accounted for in an existing collection approved by OMB.<sup>25</sup> DOL data collections needed to register apprentices and apprenticeship programs are accounted for in an existing collection approved by OMB.<sup>26</sup>

Under the PRA, an agency may not collect or sponsor an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.<sup>27</sup> This collection of information is approved under OMB Control Number 1235-0034. The Department of Labor estimates that it will take an average of 15 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information that the Department of Labor will collect, as discussed in section 3.02 of this notice, includes the type of facility, facility location, proposed labor classifications, proposed prevailing wage rates, job descriptions and duties, and any rationale for the proposed classifications. After review, the Department of Labor will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the area in which the facility is located. You may view the Department of Labor's webpage instruction here: <https://www.dol.gov/agencies/whd/IRA>.

## SECTION 7. DRAFTING INFORMATION

The principal authors of this notice are Alexander Scott and Jeremy Milton of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice contact Mr. Scott at (202) 317-6853 (not a toll-free number).

Melanie R. Krause,  
*Acting Deputy Commissioner for Services and Enforcement.*

Krishna P. Vallabhaneni,  
*Tax Legislative Counsel.*

*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also: Part I, §§ 6011, 6662, 6662A, 6707A; 1-6011-4.)*

## Rev. Proc. 2022-42

### SECTION 1. PURPOSE

This revenue procedure sets forth the procedures under § 30D(d)(3) of the Internal Revenue Code (Code) for qualified manufacturers to enter into a written agreement with the Secretary of the Treasury or her delegate (Secretary) under which such manufacturer agrees to make periodic written reports to the Secretary providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer that is eligible for a clean vehicle credit as the Secretary may require. Vehicles eligible for the clean vehicle credit under § 30D of the Code (§ 30D credit), the credit for qualified commercial clean vehicles under § 45W of the Code (§ 45W credit), and vehicles eligible for the credit for previously-owned clean vehicles under § 25E of the Code (§ 25E credit), respectively, generally must be manufactured by a qualified manufacturer as

<sup>24</sup> Described in section 2.02 of this notice, above.

<sup>25</sup> OMB Control Number 1235-0023.

<sup>26</sup> OMB Control Number 1205-0223.

<sup>27</sup> See 5 C.F.R. 1320.8(b)(3)(vi).

described in § 30D(d)(1)(C) and (d)(3).<sup>1</sup> See §§ 45W(c)(1) and 25E(c)(1)(D)(i). This revenue procedure also provides the procedures for persons selling vehicles to report the information required to be reported to the Internal Revenue Service (IRS) in order for a vehicle to be eligible for the clean vehicle credit under § 30D or § 25E.

## SECTION 2. BACKGROUND

### .01 Section 30D, Clean Vehicle Credit

(1) Section 30D was originally enacted by § 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for purchasing and placing in service new qualified plug-in electric drive motor vehicles. Section 30D has been amended several times since its enactment, most recently by § 13401 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). In general, the amendments made by § 13401 of the IRA to § 30D apply to vehicles placed in service after December 31, 2022, except as provided in § 13401(k)(2) through (5) of the IRA.

(2) As amended by § 13401(b) of the IRA, § 30D(d)(1)(G) requires, as of August 17, 2022, any vehicle eligible for the § 30D credit to undergo final assembly in North America. Section 30D(d)(5) defines “final assembly” as the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

(3) As amended by § 13401(c)(1) of the IRA, § 30D(d)(1) defines a “new clean vehicle” as a motor vehicle that satisfies the following eight requirements set forth in § 30D(d)(1)(A) through (H):

(a) The original use of the motor vehicle must commence with the taxpayer.

(b) The motor vehicle must be acquired for use or lease by the taxpayer and not for resale.

(c) The motor vehicle must be made by a qualified manufacturer.

(d) The motor vehicle must be treated as a motor vehicle for purposes of title II of the Clean Air Act.

(e) The motor vehicle must have a gross vehicle weight rating of less than 14,000 pounds.

(f) The motor vehicle must be propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 7 kilowatt hours and is capable of being recharged from an external source of electricity.

(g) The final assembly of the motor vehicle must occur within North America.

(h) The person who sells any vehicle to the taxpayer must furnish a report to the taxpayer and to the Secretary, at such time and in such manner as the Secretary provides, containing the following items:

(i) The name and taxpayer identification number of the taxpayer;

(ii) The vehicle identification number of the vehicle, unless, in accordance with any applicable rules promulgated by the Secretary of Transportation, the vehicle is not assigned such a number;

(iii) The battery capacity of the vehicle;

(iv) Verification that original use of the vehicle commences with the taxpayer;

(v) The maximum credit under § 30D allowable to a taxpayer with respect to the vehicle (the amount reported is without regard to the § 30D(f)(10) or § 25E(b) limitations based on modified adjusted gross income; and

(vi) In the case of a taxpayer who makes an election to transfer the credit to an eligible entity under § 30D(g)(1),<sup>2</sup> any amount described in § 30D(g)(2)(C) that has been provided to such taxpayer.

(4) As amended by § 13401(c)(1) of the IRA, §§ 30D(d)(1)(C) and 30D(d)(3) replace the term “manufacturer” with “qualified manufacturer” applicable to vehicles placed in service after December 31, 2022.<sup>3</sup> Section 30D(d)(3) defines a “qualified manufacturer” as any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (as defined in 42 U.S.C. §§ 7521, *et seq.*) that enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require. Section 30D(d)(6) provides that “new clean vehicle” includes any new qualified fuel cell motor vehicle (as defined in § 30B(b)(3)) that meets the requirements under § 30D(d)(1)(G) and (H).

(5) Section 30D(e)(1)(A) provides that the critical minerals requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the applicable critical minerals (as defined in § 45X(c)(6) of the Code) contained in such battery that were (i) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (ii) recycled in North America, is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by

<sup>1</sup> Section 30D(d)(6) defines a new clean vehicle to include any new qualified fuel cell motor vehicle (as defined in § 30B(b)(3)) that meets the requirements of § 30D(1)(G) and (H). Section 25E(c) defines a previously-owned clean vehicle to include, in part, a motor vehicle that either (1) meets the requirements of § 30D(d)(1)(C) (regarding qualified manufacturer), or (2) satisfies the requirements of § 30B(b)(3)(A) and (B) (regarding fuel cell motor vehicles) and has a gross vehicle weight rating of less than 14,000 pounds. Therefore, if a new clean vehicle is a new qualified fuel cell motor vehicle described in § 30D(d)(6), it does not need to be made by a qualified manufacturer, as otherwise required under § 30D(d)(1)(C). Similarly, if a previously-owned clean vehicle is a fuel cell motor vehicle described in § 25E(c)(1)(D)(ii), it does not need to be made by a qualified manufacturer, as otherwise required under § 25E(c)(1)(D)(i). However, any qualified manufacturer that makes fuel cell vehicles must report on such vehicles as described in sections 4.02 and 6 of this revenue procedure. In addition, any manufacturer of fuel cell vehicles that is not subject to the requirement to be a qualified manufacturer is encouraged to become a qualified manufacturer for purposes of providing the IRS with information to facilitate tax administration.

<sup>2</sup> Amendments to § 30D to allow an election to transfer the credit to an eligible entity are effective for vehicles placed in service after December 31, 2023.

<sup>3</sup> See also § 25E(c)(1)(D)(i) of the Code.

the Secretary). The applicable percentage for the critical minerals requirement is set forth in § 30D(e)(1)(B)(i) through (v) and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the date proposed guidance is issued and before January 1, 2024, the applicable percentage is 40 percent. In the case of a vehicle placed in service during calendar year 2024, 2025, and 2026, the applicable percentage is 50 percent, 60 percent, and 70 percent, respectively. In the case of a vehicle placed in service after December 31, 2026, the applicable percentage is 80 percent.

(6) Section 30D(e)(2)(A) provides that the battery components requirement with respect to the battery from which the electric motor of a vehicle draws electricity is satisfied if the percentage of the value of the components contained in such battery that were manufactured or assembled in North America is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary). The applicable percentage for the battery components requirement is set forth in § 30D(e)(2)(B)(i) through (vi) and varies based on when the vehicle is placed in service. In the case of a vehicle placed in service after the date proposed guidance is issued and before January 1, 2024, the applicable percentage is 50 percent. In the case of a vehicle placed in service during calendar year 2024 or 2025, the applicable percentage is 60 percent. In the case of a vehicle placed in service during calendar year 2026, 2027, and 2028, the applicable percentage is 70 percent, 80 percent, and 90 percent, respectively. In the case of a vehicle placed in service after December 31, 2028, the applicable percentage is 100 percent.

(7) Section 13401(k)(3) of the IRA provides that the critical minerals and the battery components requirements apply to vehicles placed in service after the date on which proposed guidance with respect to the critical minerals and the battery components requirements is issued by the Secretary. Such guidance is described in § 30D(e)(3)(B).<sup>4</sup>

(8) Section 30D(f)(11)(A) provides that no credit is allowed for a vehicle with

a manufacturer's suggested retail price in excess of the applicable limitation. Section 30D(f)(11)(B) provides that the applicable limitation for each vehicle classification is as follows: in the case of a van, a sport utility vehicle, or a pickup truck, \$80,000; and in the case of any other vehicle, \$55,000.

#### *.02 Section 25E, Previously-Owned Clean Vehicles Credit*

(1) Section 13402 of the IRA added § 25E to the Code, which is generally effective for vehicles acquired after December 31, 2022, and before January 1, 2033 (except the election to transfer of the credit to an eligible entity is effective for vehicles acquired after December 31, 2023). Section 25E(a) provides that in the case of a qualified buyer who during a taxable year places in service a previously-owned clean vehicle, an income tax credit is allowed for the taxable year equal to the lesser of (1) \$4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle (that is, the § 25E credit).

(2) Section 25E(c) defines certain terms for purposes of the § 25E credit. Section 25E(c)(1) defines "previously-owned clean vehicle" as, with respect to a taxpayer, a motor vehicle that satisfies the following four requirements set forth in § 25E(c)(1)(A) through (D):

(a) The model year of the motor vehicle is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle.

(b) The original use of the motor vehicle commences with a person other than the taxpayer.

(c) The motor vehicle is acquired by the taxpayer in a qualified sale.

(d) The motor vehicle:

(i) meets the requirements of § 30D(d)(1)(C), (D), (E), (F), and (H) (except for § 30D(d)(1)(H)(iv)), or

(ii) is a motor vehicle that:

(A) satisfies the requirements under § 30B(b)(3)(A) and (B), and

(B) has a gross vehicle weight rating of less than 14,000 pounds.

(3) Section 25E(c)(2) defines a "qualified sale" as a sale of a motor vehicle (A) by a dealer (as defined in § 30D(g)(8)), (B) for a sale price that does not exceed

\$25,000, and (C) that is the first transfer since August 16, 2022, to a qualified buyer other than the person with whom the original use of such vehicle commenced.

(4) Section 25E(c)(3) defines "qualified buyer" as, with respect to a sale of a motor vehicle, a taxpayer (A) who is an individual, (B) who purchases such vehicle for use and not for resale, (C) with respect to whom no deduction is allowable with respect to another taxpayer under § 151 of the Code, and (D) who has not been allowed a § 25E credit for any sale during the 3-year period ending on the date of the sale of such vehicle.

(5) Section 25E(c)(4) defines "motor vehicle" and "capacity" to have the meaning given such terms in § 30D(d)(2) and (4), respectively.

#### *03. Section 45W, Credit for Qualified Commercial Clean Vehicles*

(1) Section 13403(a) of the IRA added new § 45W to the Code, which is effective for vehicles acquired after December 31, 2022, and before January 1, 2033. A taxpayer can claim a § 45W credit for purchasing and placing in service a qualified commercial clean vehicle, as defined in § 45W(c), during the taxable year. The amount of the § 45W credit is the lesser of (1) 15 percent of the taxpayer's basis in the vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or (2) the incremental cost of the vehicle. Under § 45W(b)(4), the credit is limited to \$7,500 in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, and \$40,000 for all other vehicles.

(2) Under § 45W(c), a "qualified commercial clean vehicle" is defined as any vehicle that is of a character subject to the allowance for depreciation that:

(a) meets the requirement under § 30D(d)(1)(C) of being made by a qualified manufacturer and is acquired for use or lease by the taxpayer and not for resale,

(b) either:

(i) meets the requirement under § 30D(d)(1)(D) of being treated as a motor vehicle for purposes of title II of the Clean Air Act and is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails), or

<sup>4</sup>Section 8 of this revenue procedure confirms that the issuance of this revenue procedure is not the issuance of the proposed guidance described in § 30D(e)(3)(B).

(ii) is mobile machinery, as defined in § 4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways), and

(c) either:

(i) is propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or

(ii) is a motor vehicle that satisfies the requirements under § 30B(b)(3)(A) and (B) of being a new qualified fuel cell motor vehicle.

### SECTION 3. DEFINITIONS

.01 *In General.* Terms used in this revenue procedure and not defined in section 3 of this revenue procedure have the same meaning as provided in § 30D, as amended by the IRA, and §§ 45W and 25E, as enacted by the IRA.

.02 *Clean Air Act Regulations.* The Clean Air Act Regulations are the regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521, *et seq.*).

.03 *Model Year.* The term “model year” means the model year determined under the Clean Air Act Regulations (see 40 CFR 86-082-2).

### SECTION 4. QUALIFIED MANUFACTURER’S WRITTEN AGREEMENT AND REPORTING

.01 *Written Agreement.*

(1) To meet certain statutory requirements of § 30D, § 25E, and § 45W, any manufacturer (within the meaning of the Clean Air Act Regulations) may enter into a written agreement with the Secretary to become a qualified manufacturer as defined in § 30D(d)(3) by providing the IRS a statement signed by a person currently authorized to bind the taxpayer in these matters, in the following form:

“For purposes of establishing [insert legal name of the manufacturer] as a qualified manufacturer as described in § 30D(d)(3) of the Internal Revenue Code, [insert legal name of the manufacturer] hereby agrees to make periodic written reports to the Internal Revenue Service providing vehicle identification numbers and such other information as described in any guidance that may be issued by the Secretary of the Treasury or the Secretary’s delegate (Secretary), including section 4.02 of Revenue Procedure 2022-42, related to each vehicle manufactured by such manufacturer at such times and in such manner as described in any guidance that may be issued by the Secretary, including section 6.02 of Revenue Procedure 2022-42.”

(2) Any changes to the content and format of the written agreement will be provided on irs.gov, and qualified manufacturers will be notified to enter a revised written agreement where necessary. The IRS will not consider a vehicle to meet the requirements of § 30D(d)(1)(C) unless a qualified manufacturer submits a written report containing the information required by section 4.02 of this revenue procedure with respect to such vehicle. For the purposes of § 25E, a qualified manufacturer must submit a written report or reports containing the information required by section 4.02 of this revenue procedure with respect to prior model year vehicles for such vehicle to be considered a previously-owned clean vehicle, to the extent such information has not already been provided for purposes of § 30D and/or § 45W. In addition, any manufacturer of fuel cell vehicles that is not subject to the requirement to be a qualified manufacturer is encouraged to become a qualified manufacturer for purposes of providing the IRS with information to facilitate tax administration.

.02 *Content of Written Reports for Qualified Manufacturers.* The written report providing information for vehicles that may be eligible for the credit under § 30D, § 25E, and/or § 45W must contain the name, address, and taxpayer identification number of the qualified manufacturer.

This written report must be provided by the qualified manufacturer to the IRS in the time and manner described in section 6.02 of this revenue procedure. In addition, the written report must contain all of the following information for any vehicle that the qualified manufacturer asserts is eligible for the credit under § 30D, § 25E, and/or § 45W:

(1) *General Information.*

(a) The make, model, model year, and any other appropriate identifiers of the motor vehicle;

(b) Certification that the motor vehicle is made by a qualified manufacturer, within the meaning of § 30D(d)(3);

(c) Certification that the motor vehicle is treated as a motor vehicle for purposes of title II of the Clean Air Act;

(d) The gross vehicle weight rating of the motor vehicle;

(e) The battery capacity of the motor vehicle;

(f) The motor vehicle’s vehicle identification number; and

(g) Such other information as the Secretary may provide on irs.gov.

(2) *Specifically, for § 30D:*

(a) Certification that the motor vehicle is propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 7 kilowatt hours and the battery is capable of being recharged from an external source of electricity, or is a new qualified fuel cell motor vehicle (as defined in § 30B(b)(3)).

(b) Certification that the motor vehicle is manufactured primarily for use on public streets, roads and highways (not including a vehicle operated exclusively on a rail or rails) and has at least four wheels.

(c) Certification that the final assembly of the motor vehicle occurred within North America.

(d) Certification of the percentage of the value of the applicable critical minerals (as defined in § 45X(c)(6)) contained in the battery from which the electric motor of the vehicle draws electricity that were (i) extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or (ii) recycled in North America.<sup>5</sup>

<sup>5</sup> This certification takes effect once the Secretary issues proposed guidance pursuant to § 30D(e)(3)(B). The IRS will not accept any certification with respect to the value of applicable critical minerals until the Secretary issues such guidance.

(e) Certification of the percentage of the value of the components contained in the battery from which the electric motor of the vehicle draws electricity that were manufactured or assembled in North America.<sup>6</sup>

(f) Whether the motor vehicle is a van, sport utility vehicle, pickup truck, or other vehicle.

(g) The motor vehicle's manufacturer's suggested retail price.

(3) *Specifically, for § 25E:*<sup>7</sup>

(a) Certification that the motor vehicle is either: propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 7 kilowatt hours and the battery is capable of being recharged from an external source of electricity, or is a new qualified fuel cell motor vehicle that satisfies the requirements under § 30B(b)(3)(A) and (B) and has a gross vehicle weight rating of less than 14,000 pounds.

(b) Certification that the motor vehicle is manufactured primarily for use on public streets, roads and highways (not including a vehicle operated exclusively on a rail or rails) and has at least four wheels.

(4) *Specifically, for § 45W:*

(a) For motor vehicles, certification that the vehicle is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails), and is either: a motor vehicle that is propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or is a new qualified fuel cell motor vehicle that satisfies the requirements under § 30B(b)(3)(A) and (B); or

(b) For mobile machinery, certification that the machinery meets the definition in § 4053(8) of the Code (including vehicles that are not designed to perform a function of transporting a load over the public highways), and that the machinery is either: propelled to a significant extent

by an electric motor that draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or is a new qualified fuel cell motor vehicle that satisfies the requirements under § 30B(b)(3)(A) and (B).

(c) With respect to a motor vehicle with a gross vehicle weight rating of less than 14,000 pounds, the manufacturer's suggested retail price.

(5) *Attestation Required.* Each written report must include: a declaration, applicable to the certification, statements, and any accompanying documents, signed by a person currently authorized to bind the qualified manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) in these matters, in the following form: "Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

*.03 Taxpayer's Reliance.* A taxpayer who acquires a "new clean vehicle," a "previously-owned clean vehicle" for which the seller provides a clean vehicle seller report, or a "qualified commercial clean vehicle" and places it in service may rely on the manufacturer's certification concerning the manufacturer's status as a qualified manufacturer (including in cases in which the certification is received by the IRS after the purchase of the vehicle). A taxpayer also may rely on the information and certifications contained in the qualified manufacturer's written reports for the tax credit allowed under §§ 30D, 25E, and 45W.

*.04 Erroneous Written Reports.* Any acknowledgment that the IRS provides for a written report, including a qualified manufacturer's certifications under §§ 30D, 45W, and 25E, is not a determination that a motor vehicle or mobile machinery qualifies for the credit under the respective Code sections.

## SECTION 5. SELLER'S REPORTS

*.01 Required Reports under Sections 30D and 25E.* For purposes of § 30D(d)(1)(H), the person who sells any vehicle to the taxpayer or, for purposes of § 25E(c)(1)(D)(i), the dealer (as defined in § 30D(g)(8)) who sells any vehicle to the taxpayer, as applicable, (collectively, Seller) must furnish a report to the taxpayer and the IRS, at such time and in such manner as the Secretary provides containing information that is listed in this section 5.01. Accordingly, for vehicle sales occurring in calendar year 2023 or later, the Seller must provide the report to the taxpayer not later than the date the vehicle is purchased and must submit the report to Secretary within fifteen (15) days of the end of the calendar year containing the following:

(1) The name and taxpayer identification number of the Seller;

(2) The name and taxpayer identification number of the taxpayer;

(3) The vehicle identification number of the vehicle, unless, in accordance with any applicable rules promulgated by the Secretary of Transportation, the vehicle is not assigned such a number;

(4) The battery capacity of the vehicle;

(5) Only for sales of new clean vehicles, verification that original use of the vehicle commences with the taxpayer;

(6) The date of sale, sale price of the vehicle, and maximum credit under § 30D or § 25E, as applicable, allowable to the taxpayer with respect to the vehicle;

(7) For sales after December 31, 2023, in the case of a taxpayer who makes an election to transfer the credit to an eligible entity under § 30D(g)(1), any amount paid or otherwise allowable as a partial payment or down payment to the taxpayer; and

(8) A declaration applicable to the report signed by a person currently authorized to bind the Seller in these matters, in the following form: "Under penalties of perjury, I declare that I have examined this report submitted to the IRS pursuant to Revenue Procedure 2022-42 by [insert name of Seller], and to the best of my knowledge and belief I certify that this

<sup>6</sup> This certification takes effect once the Secretary issues proposed guidance pursuant to § 30D(e)(3)(B). The IRS will not accept any certification with respect to value of the components contained in a vehicle's battery until the Secretary issues such guidance.

<sup>7</sup> For motor vehicles for which such certification has not already been provided for purposes of § 30D and/or § 45W.

report is true, correct, and complete.” This written report must be provided to the IRS in the time and manner described in section 6.03 of this revenue procedure.

## **SECTION 6. TIME AND METHOD FOR FILING WRITTEN AGREEMENTS AND REPORTS**

### *.01 Filing of Qualified Manufacturer Written Agreement.*

Manufacturers must file their written agreement pursuant to section 4.01 of this revenue procedure to be considered a qualified manufacturer. Manufacturers must send their signed written agreements to IRS.Clean.Vehicle.Manufacturers@irs.gov. The written agreement must be signed by a person currently authorized to bind the taxpayer in these matters. An electronic signature is acceptable. Manufacturers will not be considered qualified manufacturers until they have filed their written agreements with the IRS.

### *.02 Time for Filing Reports by Qualified Manufacturers.*

Qualified manufacturers must file the reports pursuant to section 4.02 of this revenue procedure with the IRS on a monthly basis, by the fifteenth of the month. Qualified manufacturers may file reports more frequently than once a month. Qualified manufacturers must send an email to IRS.Clean.Vehicles.QM.Reporting@irs.gov indicating their intent to submit monthly reports and the IRS will respond with instructions on how to submit their reporting information. Additional information regarding written reports will be provided on irs.gov.

### *.03 Time for Filing Seller Reports*

For vehicle sales occurring in calendar year 2023 and later, Sellers must file reports pursuant to section 5 of this revenue procedure with the IRS within fifteen days after the end of the calendar year. Sellers must submit their reporting information in a format and method that the Secretary provides. The first reports from Sellers will be due on January 15, 2024.

## **SECTION 7. PAPERWORK REDUCTION ACT**

The collection of information contained in this revenue procedure has been

submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2137.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 4.01, 4.02, 5.01, 6.01, 6.02, and 6.03. This information is collected and retained to ensure that vehicles meet the requirements for the clean vehicle credit under § 30D, the new qualified commercial clean vehicle credit under § 45, and the previously-owned clean vehicle credit under § 25E. This information will be used to determine whether the vehicle for which the credit is claimed by a taxpayer is property that qualifies for the credit. The collection of information is voluntary to obtain a benefit. The likely respondents are corporations and partnerships.

The estimated total annual reporting burden is 13,491 hours.

The estimated annual burden per respondent is 0.25 hours to complete the reporting required under this revenue procedure. The estimated number of respondents is 53,965. The estimated annual frequency of responses is 12.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103 of the Code.

## **SECTION 8. PROPOSED GUIDANCE FOR CRITICAL MINERALS AND BATTERY COMPONENTS REQUIREMENTS**

For purposes of § 30D(e)(3)(B), the issuance of this revenue procedure is not the issuance of proposed guidance with respect to the critical minerals and battery components requirements under § 30D(e). The Department of the Treasury (Treasury Department) and the IRS will explicitly identify when they are issuing proposed guidance with respect to the critical minerals and battery components requirements under § 30D(e).

## **SECTION 9. DRAFTING INFORMATION**

The principal author of this revenue procedure is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this revenue procedure, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

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*26 CFR 1.1441-1(e)(5) and (6). 2023 Qualified Intermediary Agreement.*

## **Rev. Proc. 2022-43**

### **SECTION 1. PURPOSE**

*.01 In General.* This Revenue Procedure sets forth the final qualified intermediary (QI) withholding agreement (QI agreement) entered into under § 1.1441-1(e)(5) that applies beginning January 1, 2023 (the 2023 QI Agreement). In general, the QI agreement allows certain persons to enter into an agreement with the Internal Revenue Service (IRS) to simplify their obligations as withholding agents under chapters 3 and 4 and as payors under chapter 61 and section 3406 for amounts paid to their account holders and allows certain persons to act as qualified derivatives dealers (QDDs) and assume primary withholding and reporting responsibilities on all dividend equivalent payments they make. The 2023 QI Agreement also allows foreign persons to enter into the agreement for purposes of the withholding and reporting required under sections 1446(a) and (f) with respect to their account holders holding interests in publicly traded partnerships.

### **SECTION 2. SCOPE**

*.01 Entities Eligible to Execute a QI Agreement.* A QI agreement may be entered into by persons described in § 1.1441-1(e)(5)(ii), including foreign financial institutions (FFIs) (as defined in § 1.1471-5(d)), foreign clearing organizations, and foreign branches of U.S.

financial institutions and clearing organizations. An eligible entity (as defined in §1.1441-1(e)(6)(ii)) may also enter into a QI agreement for purposes of becoming a QDD.

An FFI may apply to enter into a QI agreement only with respect to its branches operating in jurisdictions identified on the IRS's Approved KYC List and if the FFI is able to, and agrees to, satisfy the requirements and obligations of (1) a participating FFI (including a reporting Model 2 FFI), (2) a registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), or (3) a registered deemed-compliant Model 1 IGA FFI (as defined in section 2.17(C) of the 2023 QI Agreement). An FFI that is a certified deemed-compliant FFI (including a nonreporting IGA FFI, as defined in §1.1471-1(b)(83)) may enter into a QI agreement if the FFI is able to, and agrees to, assume the obligations of, and to be treated as, (1) a participating FFI (including a reporting Model 2 FFI), (2) a registered deemed-compliant FFI (including a reporting Model 1 FFI or a nonreporting Model 2 FFI treated as registered deemed-compliant), or (3) a registered deemed-compliant Model 1 IGA FFI, with respect to all accounts that it maintains (even if the FFI does not intend to act as a QI for all of the accounts it maintains). A central bank of issue may enter into a QI agreement provided that it meets and agrees to assume the obligations of, and to be treated as, (1) a participating FFI (including a reporting Model 2 FFI) or (2) a registered deemed-compliant FFI (including a reporting Model 1 FFI), with respect to any account that it maintains that is held in connection with a commercial financial activity described in §1.1471-6(h) and for which it receives a withholdable payment (as defined in §1.1471-1(b)(145)). A foreign branch of a U.S. financial institution or clearing organization may also apply to enter into a QI agreement provided that it is a reporting Model 1 FFI, or it agrees to assume the requirements and obligations of a participating FFI (including a reporting Model 2 FFI).

An entity that is a territory financial institution (territory FI) (as defined in §1.1471-1(b)(130)) or a nonparticipating

FFI (as defined in §1.1471-1(b)(82)) may not apply to enter into a QI agreement.

A foreign corporation that is a non-financial foreign entity or NFFE (as defined in §1.1471-1(b)(80)) that is described in one of the categories in §1.1441-1(e)(5) (ii) may also apply to enter into a QI agreement. An NFFE that seeks to act as an intermediary on behalf of its shareholders should not apply for QI status and instead should apply for withholding foreign partnership status as a reverse hybrid entity. An NFFE that enters into a QI agreement to act as an intermediary on behalf of persons other than its shareholders will be required to satisfy the withholding and reporting requirements of §§1.1472-1(a) and 1.1474-1(i) with respect to any NFFE that is a beneficial owner for whom the QI is acting with respect to a withholdable payment. Except for a QDD that is a partnership or a branch of a partnership, the QI agreement generally does not apply to a foreign partnership or foreign trust. A foreign partnership or foreign trust may apply for status as a withholding foreign partnership or withholding foreign trust. See §§1.1441-5(c)(2)(ii) and 1.1441-5(e)(5)(v).

.02 *Effect on Other Documents.* Revenue Procedure 2017-15, 2017-3 I.R.B. 437 (the 2017 QI Agreement), is superseded with respect to a QI's requirements that apply after December 31, 2022. A QI agreement in effect before December 31, 2022, expires, in accordance with its terms, on December 31, 2022.

### **SECTION 3. BACKGROUND – Withholding and Reporting Requirements under Chapters 3, 4, and 61, and Sections 1446 and 3406.**

.01 *Withholding and Reporting under Chapter 4 on Payments Made to FFIs and Other Payees.* Section 1471(a) requires a withholding agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to an FFI, unless the FFI agrees to and complies with the terms of the FFI agreement to satisfy the obligations specified in section 1471(b) (a participating FFI), is deemed to meet the requirements under section 1471(b) (a deemed-compliant FFI), or is treated as an exempt beneficial owner under §1.1471-6. Section 1472(a) requires a withholding

agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to an NFFE (other than an excepted NFFE) unless such entity provides a certification that it does not have any substantial U.S. owners or provides information regarding its substantial U.S. owners.

A participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (other than a reporting Model 1 FFI) will satisfy its requirement to withhold under sections 1471(a) and 1472(a) on withholdable payments made to accounts held by entities by withholding on accounts that the FFI is required to treat as held by nonparticipating FFIs and recalcitrant account holders under the FFI agreement, §1.1471-5(f), or an applicable Model 2 IGA. See the FFI agreement, the Model 2 IGA, and §1.1471-5(f) for further withholding requirements that may apply to FFIs and the Model 2 IGA's suspension of withholding on non-consenting U.S. accounts. A QI that is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI will satisfy its requirement to withhold under section 1471(a) on withholdable payments made to accounts held by entities by withholding on accounts that the FFI is required to treat as held by nonparticipating FFIs.

A participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI, and a registered deemed-compliant Model 1 IGA FFI must report certain account information regarding each U.S. account (or U.S. reportable account) that it maintains to the extent required under the FFI agreement, §1.1471-5(f), or a Model 1 or Model 2 IGA. A participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (other than a reporting Model 1 FFI) must report certain information about accounts that it maintains that are held by recalcitrant account holders (or non-consenting U.S. accounts). A withholding agent making payments to an NFFE that is not reported by an FFI as a U.S. account (or U.S. reportable account) is also required to report withholdable payments made to an NFFE (other than an excepted NFFE) with substantial U.S. owners on Form 8966, *FATCA Report*. See §§1.1472-1(b)(1)(iii) and 1.1474-1(i). A withholding agent

(including a participating FFI or registered deemed-compliant FFI) that is required to withhold on a withholdable payment must report the payment on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*.

.02 *Withholding and Reporting under Chapter 3 on Payments to Foreign Persons*. Sections 1441 and 1442 require a withholding agent to deduct and withhold a tax equal to 30 percent on any payment of U.S. source fixed or determinable annual or periodical (FDAP) income that is an amount subject to withholding (as defined in §1.1441-2(a)) made to a foreign person (including the payment of a dividend equivalent under section 871(m)). A lower rate of withholding may apply under the Internal Revenue Code (the Code) (for example, section 1443), the regulations, or an income tax treaty. Generally, a withholding agent must also report these payments on Form 1042-S regardless of whether withholding is required. See §1.1461-1(c) (covering amounts subject to reporting).

.03 *Backup Withholding under Section 3406 and Reporting on Payments to Certain U.S. Persons under Chapter 61*. Under sections 6041, 6042, 6045, 6049, and 6050N (chapter 61 or the Form 1099 reporting provisions), payors of interest, dividends, royalties, gross proceeds from the sale of securities, and other fixed or determinable income must report payments made to certain U.S. persons (that is, U.S. non-exempt recipients or presumed U.S. non-exempt recipients) on the appropriate Form 1099 unless an exception to reporting applies. See §§1.6041-4(a); 1.6042-3(b)(1)(iii); 1.6045-1(g)(1)(i); 1.6049-5(b)(12); and 1.6050N-1(c)(1)(i). Under section 3406, a payor must generally obtain a Form W-9, *Request for Taxpayer Identification Number and Certification*, from a U.S. non-exempt recipient receiving a payment reportable on a Form 1099 or must otherwise backup withhold under section 3406 and report the payment on Form 1099.

.04 *Coordination of Withholding and Reporting Requirements under Chapters 3 and 4*. With respect to a withholdable payment that is subject to withholding under chapter 4, a withholding agent may credit any tax withheld under chapter 4 against

its liability for any tax due with respect to the payment under chapter 3. A withholding agent is required to report on a single Form 1042-S the information required under both chapters 3 and 4 with respect to a payment subject to withholding under both chapters 3 and 4. With respect to a withholdable payment that is not subject to withholding under chapter 4 and that is an amount subject to withholding under chapter 3, a withholding agent is also required to report on Form 1042-S the applicable chapter 4 exemption code for the payment and the recipient's chapter 4 status.

.05 *Responsibilities of Intermediaries that Enter into QI Agreements*. When the IRS enters into a QI agreement with a foreign person (or foreign branch of a U.S. person), that foreign person (or foreign branch of a U.S. person) becomes a QI. A QI is a withholding agent under chapters 3 and 4 and a payor under chapter 61 and section 3406 for amounts that it pays to its account holders. In addition, as described in section 4.01 of this Revenue Procedure, starting January 1, 2023, a QI may assume withholding responsibilities under section 1446(a) for a distribution from a publicly traded partnership (PTP) received on behalf of an account holder and under section 1446(f) for an amount realized from the transfer of a PTP interest paid to an account holder that is the transferor of the interest. The general obligations of a QI as a withholding agent, broker, or payor are described in section 1.01 of the QI agreement and are relevant to whether an event of default occurs under section 11.06 of the QI agreement.

A QI agreement also includes required compliance procedures for QIs. Under section 10 of the QI agreement, a QI is required to have a responsible officer adopt a compliance program and make periodic certifications of compliance on behalf of the QI for each three-year certification period. The periodic certifications also include certain factual information that is based in part on the results of a periodic review of the QI's compliance with its QI agreement, which is required to be conducted for one year of the certification period by an independent reviewer except when the QI obtains a waiver of its periodic review requirement.

## SECTION 4. SUMMARY OF CHANGES TO THE QI AGREEMENT

This section 4 outlines changes to the QI agreement that are included in the 2023 QI Agreement set forth in section 6 of this Revenue Procedure. Section 4.01 of this Revenue Procedure generally describes a QI's requirements under sections 1446(a) and (f) that were proposed to be added to the QI agreement in Notice 2022-23, 2022-20 I.R.B 1062, and modifications to those requirements included in the 2023 QI Agreement. Section 4.02 of this Revenue Procedure describes the requirements for QIs acting as QDDs or as intermediaries with respect to payments of dividend equivalents for purposes of section 871(m). Section 4.03 of this Revenue Procedure describes changes included in the 2023 QI Agreement that relate to stakeholder remarks regarding the 2017 QI Agreement received following its publication. Section 4.04 of this Revenue Procedure describes modifications to the compliance and certification procedures for QIs, which relate to sections 1446(a) and (f) or are otherwise included in the 2023 QI Agreement for improved compliance. Section 4.05 of this Revenue Procedure describes a limited number of changes included in the 2023 QI Agreement that are not described elsewhere in this section 4.

.01 *QI's Requirements under Sections 1446(a) and (f)*. Section 1446(a) requires withholding by a partnership on its effectively connected income allocable to a foreign partner for a taxable year at the tax rates specified in section 1446(b). In the case of a PTP, however, an entity treated as a nominee under §1.1446-4(b)(3) for a PTP distribution made to a foreign partner is a withholding agent for the distribution and is required to withhold a tax under section 1446(a) to the extent required under §1.1446-4(d). A nominee or broker holding a PTP interest is also required to comply with partner reporting requirements under §1.6031(c)-1T.

With respect to transfers of partnership interests, sections 864(c)(8) and 1446(f) were added to the Internal Revenue Code (the Code) by the Tax Cuts and Jobs Act, Pub. L. 115-97 on December 22, 2017. Section 864(c)(8) generally provides that



gain or loss derived by a foreign person on the sale or exchange of an interest in a partnership engaged in a trade or business within the United States is treated as effectively connected gain or loss to the extent provided in that section. Section 1446(f) (1) generally provides that if any portion of the gain on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States, then the transferee of the interest must withhold a tax equal to 10 percent of the amount realized on the disposition.

On November 30, 2020, in TD 9926, 85 FR 76910, final regulations were published that (1) impose withholding requirements under section 1446(f) on brokers (including QIs) that effect transfers of PTP interests and (2) amend certain of the provisions of §1.1446-4 (relating to withholding on PTP distributions) that apply beginning January 1, 2023, including allowing a QI to act as a nominee by assuming withholding on a PTP distribution (the final regulations). See Notice 2021-51, 2021-36 I.R.B. 361, regarding the effective date of these provisions of the final regulations.

On May 16, 2022, the Treasury Department and the IRS released Notice 2022-23, providing proposed changes to the QI agreement to permit a QI to assume certain withholding and reporting responsibilities under sections 1446(a) and (f). The proposed changes to the QI agreement in Notice 2022-23 cover the documentation, withholding, and reporting requirements applicable to QIs receiving payments of PTP distributions (including amounts subject to section 1446(a)) and amounts realized under section 1446(f) on behalf of account holders. For withholding by QIs on amounts realized paid on transfers of PTP interests, the proposed changes incorporate the exceptions to withholding provided in §1.1446(f)-4. For PTP distributions, the proposed changes require withholding by a QI acting as a nominee for a distribution under §1.1446-4 and to the extent withholding is otherwise required under section 3.02(C) of the QI agreement (covering a QI's residual withholding requirement). The proposed changes allow a QI to assume withholding under section 1446(a) or (f) on a

payment-by-payment basis and also allow a QI to act as a disclosing QI by providing specific payee documentation to its withholding agent for the payment of a PTP distribution or amount realized from the sale of a PTP interest, thereby generally relieving the QI from withholding and reporting on those payments.

With respect to a QI's documentation of account holders for sections 1446(a) and (f), consistent with requirements for 1446(a) and (f) purposes, a proposed requirement in Notice 2022-23 provides that a withholding certificate is not considered valid without a U.S. TIN for the account holder on the withholding certificate. With respect to a QI's reporting, the proposed changes in Notice 2022-23 specify the requirements for QIs to report partner information regarding account holders holding PTP interests, which are generally derived from the requirements of §1.6031(c)-1T to facilitate the issuance of partner statements under section 6031(b) when nominees hold partnership interests. Notice 2022-23 also proposed requirements for a QI's reporting on Forms 1042-S for payments subject to withholding under section 1446(a) or (f), including a requirement regarding a QI's issuance of a payee-specific Form 1042-S that reports withholding under section 1446(a) or (f). Notice 2022-23 further proposed a restriction on a QI's filing of a collective refund for overwithholding under section 1446(a) or (f), material failures and events of default specific to a QI's requirements under sections 1446(a) and (f), and other modifications to the QI agreement relating to these proposed changes. Finally, consistent with the final regulations, Notice 2022-23 proposed to permit a QI to apply the reimbursement and set-off procedures for overwithholding under sections 1446(a) and (f).

Notice 2022-23 did not, however, include proposed changes to the compliance procedures for QIs under section 10 of the 2017 QI Agreement or the certifications and related information a QI must provide for each certification period (generally in Appendix I to the 2017 QI Agreement) for purposes of its requirements under sections 1446(a) and (f). Instead, Notice 2022-23 requested comments on these provisions; however, none were received.

Subject to certain modifications, generally in response to comments received, the 2023 QI Agreement incorporates the changes proposed in Notice 2022-23. This section 4.01 highlights comments and modifications to Notice 2022-23 that are included in the 2023 QI Agreement. The 2023 QI Agreement also includes compliance and certification procedures for QIs relating to sections 1446(a) and (f), which are described, together with other changes to those procedures, in section 4.04 of this Revenue Procedure. For the conditions in the 2023 QI Agreement regarding a QI's issuance of a payee-specific Form 1042-S (including to report withholding under section 1446(a) or (f)), see section 4.03(7) of this Revenue Procedure. For references to general documentation validity standards applicable to sections 1446(a) and (f) not included in Notice 2022-23, see section 5.10(A) of the 2023 QI Agreement.

(1) *Requirement to collect U.S. TINs.* Comments expressed concern with a proposed requirement in Notice 2022-23 that would require QIs to obtain U.S. TINs from their foreign account holders receiving PTP distributions or amounts realized in order to treat documentation as valid for purposes of sections 1446(a) and (f). The comments raised concerns that, due to this requirement, a QI might be found in default of its QI agreement with respect to section 5.01(A) of the QI agreement (prescribing best efforts to collect valid documentation) when it is unable to collect U.S. TINs from a significant number of its account holders despite having properly withheld based on the documentation obtained. Comments also proposed that QIs be provided a transition period to collect U.S. TINs from their account holders for purposes of section 1446(a) or (f) given that collecting U.S. TINs from foreign account holders is generally not required of a QI for chapter 3 and 4 purposes (and, thus, may have to be requested after otherwise valid documentation is collected). One comment requested a "best efforts" safe harbor for QIs to request U.S. TINs based on the reasonable cause exception to penalties for missing TINs under §301.6724-1(e) (such as an initial TIN solicitation and two follow-up solicitations), while another comment requested that a QI's failure to obtain U.S. TINs not

be treated as a material failure or an event of default under the QI agreement.

In response to these comments and difficulties that QIs generally may encounter in obtaining U.S. TINs from all their account holders holding PTP interests, the 2023 QI Agreement provides solicitation requirements that QIs will be required to apply for collecting U.S. TINs from their account holders receiving PTP distributions or amounts realized beginning January 1, 2023. These requirements are similar to those for payors to establish that a failure to provide TINs is due to the failure of the payee to provide information for purposes of obtaining a waiver from penalties for missing TINs on Form 1099 based on reasonable cause under §301.6724-1(e). When a QI satisfies these requirements, the QI will be considered to have applied its “best efforts” to obtain the U.S. TINs of its account holders receiving PTP distributions or amounts realized under section 5.01(A) of the 2023 QI Agreement. The 2023 QI Agreement makes clear, however, that this allowance does not affect a QI’s requirement to collect valid documentation with a U.S. TIN to apply reduced withholding under section 1446(a) or (f) based on the status of an account holder for any year, including a foreign partnership or trust account holder (as also required for a foreign partnership or trust in the instructions to Form W-8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*).

(2) *Requirements for disclosing QIs.* Comments also raised concerns with the proposed requirement in Notice 2022-23 that a QI must, when acting as a disclosing QI for a payment of a PTP distribution or amount realized from the sale of a PTP interest, act as a disclosing QI for the entire amount of the payment. Because this requirement could apply when multiple account holders of a QI receive a payment of a PTP distribution or amount realized from the sale of a PTP interest, the comments noted that a QI’s failure to provide valid documentation to its withholding agent for any account holder (which includes a U.S. TIN for the account holder) would prevent the QI from acting as a disclosing QI with respect to all account holders receiving

the payment. One comment requested that a QI be permitted to act as a disclosing QI on both an account-by-account and payment-by-payments basis. The comment also requested that disclosing QIs be permitted to apply the documentation requirements applicable to nonqualified intermediaries, an allowance that would not require a disclosing QI to provide valid payee documentation to its withholding agent when reduced withholding is not sought. Another comment more specifically requested that a disclosing QI be permitted to provide documentation to its withholding agent for a foreign account holder that does not include a U.S. TIN. Finally, another comment requested clarification on whether a QI would be permitted to act as a disclosing QI for a U.S. account holder (in addition to its foreign account holders).

The 2023 QI Agreement incorporates the requirement of Notice 2022-23 that a QI must act as a disclosing QI for the entire amount of a PTP distribution or amount realized from the sale of a PTP interest. Retaining this requirement will prohibit a disclosing QI from acting as a nonqualified intermediary with respect to any account holder receiving a payment of a PTP distribution or amount realized and will thereby require the QI to withhold to the extent required under the 2023 QI Agreement due to underwithholding by its withholding agent on the amount paid to the account holder. See sections 3.02(C) and 10.05(C)(9) of the 2023 QI Agreement (covering, respectively, a QI’s residual withholding requirement and a QI reviewer’s requirement to determine any underwithholding when a QI acts as a disclosing QI).

In consideration of the comments, however, the 2023 QI Agreement clarifies the requirements of a disclosing QI with respect to the specific payee documentation it provides to its withholding agent for a foreign partner. Under the 2023 QI Agreement, this documentation must be a Form W-8 for each foreign partner receiving the payment, but without regard to whether the Form W-8 includes a U.S. TIN. This provision addresses concerns that a QI would not otherwise be permitted to act as a disclosing QI for the entire amount of a payment made to multiple account holders due to any account holder

failing to provide its U.S. TIN despite the QI’s efforts to obtain the TIN under section 5.01(A) of the 2023 QI Agreement. See section 4.01(1) of this Revenue Procedure.

Concerning whether a QI may act as a disclosing QI for a payment allocable to a U.S. account holder, the Treasury Department and the IRS intended this result as part of Notice 2022-23. For clarification, the 2023 QI Agreement adds a reference to Form W-9, *Request for Taxpayer Identification Number and Certification*, as part of the specific payee documentation that a disclosing QI may provide to its withholding agent.

(3) *Partner information reporting.* For a QI not acting as a disclosing QI for a PTP distribution or amount realized paid to an account holder, Notice 2022-23 proposed to require that the QI issue to the account holder the statement that is described in §1.6031(c)-1T(h). Section 1.6031(c)-1T(h) requires this statement to include information that generally corresponds to the information that the PTP would have provided the account holder on a Schedule K-1 (Form 1065)). The requirement to issue this statement would apply unless the QI is able to provide to the PTP (or the PTP’s agent) the statement specified in §1.6031(c)-1T(a) with respect to the account holder.

A comment on this proposed requirement requested the allowance of a simplified or modified Schedule K-1 that a QI would be permitted to issue to an account holder in lieu of a separate statement for purposes of §1.6031(c)-1T(h). In response to this comment, the 2023 QI Agreement permits a QI to issue the statement by providing to the account holder the Schedule K-1 issued by the PTP to the QI when the QI includes with the Schedule K-1 supplemental information determined by the QI indicating the percentage of each amount on the Schedule K-1 applicable to the account holder.

For a QI acting as a disclosing QI for a PTP distribution or amount realized paid to an account holder, Notice 2022-23 proposed a requirement for the QI to provide the statement specified in §1.6031(c)-1T(a) to the PTP (or the PTP’s agent) or to the QI’s nominee for the payment. Comments asserted that providing this statement to a nominee is

unnecessary when the nominee maintains fully segregated and disclosed accounts for the account holders of a disclosing QI receiving these payments because the QI would already have provided the nominee with the partner information for the nominee to report under §1.6031(c)-1T(a) with respect to the PTP interests held by the QI. In response to these comments, the 2023 QI Agreement provides that the statement specified in §1.6031(c)-1T(a) is not required to be provided to a QI's nominee to the extent the nominee maintains fully segregated and disclosed accounts for the disclosing QI's account holders that include the information for the PTP to issue the statement. With respect to the information required on a statement provided by a QI under §1.6031(c)-1T(a), the 2023 QI Agreement specifies that it must include a U.S. TIN for a foreign account holder only when provided by the account holder to the QI.

With respect to the definition of a nominee included in Notice 2022-23, one comment noted that the term "nominee" is defined by reference to the definition under §1.1446-4(b)(3) (covering only nominees permitted to assume withholding on PTP distributions under section 1446(a)) and questioned whether this definition should apply for purposes of proposed section 8.07 of the 2023 QI Agreement. In response to this comment, the 2023 QI Agreement defines a nominee for purposes of section 8.07 to mean any entity that holds a PTP interest directly or indirectly for another person (similar to the term as used in §1.6031(c)-1T(a)).

(4) *Validity period for section 1446 documentation.* Comments requested clarification on whether a QI would be required to obtain revised documentation from account holders for each payment of a PTP distribution or amount realized from the sale of a PTP interest, noting that certain proposed revisions in Notice 2022-23 suggested a payment-by-payment requirement for collecting documentation. The Treasury Department and the IRS did not intend to establish a requirement as raised in these comments and note that references in Notice 2022-23 to a QI's assumption of withholding on a payment of a PTP distribution or amount realized from the sale of a PTP interest were intended to distinguish those payments from chapter 3

payments (for which a QI may separately assume withholding responsibilities). In response to these comments, section 5.11(A) of the 2023 QI Agreement indicates that the validity period of documentation for purposes of section 1446(a) or (f) is the same as the validity period that otherwise applies to documentation under section 5.11(A) of the 2023 QI Agreement (covering documentation other than a Form W-9).

(5) *Allowance for collective refunds.* A comment requested that QIs be permitted to file collective refunds for overwithholding under sections 1446(a) and (f) with respect to their account holders to the same extent permitted for chapter 3 payments. This comment is not adopted as account holders receiving payments subject to withholding under section 1446(a) or (f) are required to file U.S. income tax returns to report these payments and should claim any associated credits or refunds of the withholding on those returns (and report any other income required on the return). See §§1.6012-1(b) and 1.6012-2(g). Thus, the 2023 QI Agreement includes the same restriction on a QI's use of the collective refund procedures for overwithholding under section 1446(f) or on a PTP distribution as in Notice 2022-23.

(6) *Presumption rule for section 1446(a) withholding.* Section 5.13(C) of the 2017 QI Agreement provides presumption rules for a QI withholding on payments that cannot be reliably associated with valid documentation under section 5.13(B) of the 2017 QI Agreement. For a payment subject to withholding under section 1446(a), Notice 2022-23 proposed to allow QIs to presume the status of an account holder when they cannot reliably associate the payment with valid documentation, which would require the QI to treat a partner in a PTP as a foreign person, with the rate of withholding determined under §1.1446-4(d)(1)(iii). Because §1.1446-4(d)(1)(iii) applies for determining the rate of withholding in those cases only when a nominee also does not receive a qualified notice for a PTP distribution (or otherwise cannot determine the income associated with the distribution based on the notice), the reference to §1.1446-4(d)(1)(iii) does not cover all cases in which a QI would be required to determine the rate of withholding under section 1446(a)

due to the absence of valid documentation associated with a partner. As a result, the 2023 QI Agreement also includes a reference to the presumption rule of §1.1446-1(c)(3) for a QI to determine the status of a partner as a foreign individual or corporation (and, thus, the rate of withholding) when the QI cannot reliably associate a payment subject to section 1446(a) withholding with valid documentation from a partner in cases not covered by the rule in §1.1446-4(d)(1)(iii).

.02 *Provisions Applicable to Qualified Derivatives Dealers and Qualified Security Lenders.* The 2017 QI Agreement includes the requirements for QIs acting as QDDs and the requirements of QIs with respect to payments of dividend equivalents they receive in an intermediary capacity for purposes of regulations issued under sections 871(m), 1441, 1461, and 1473 (section 871(m) regulations). The 2017 QI Agreement requires a QI acting as a QDD to act as a QDD for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities, excluding any payments made or received to the extent treated as effectively connected with the conduct of a trade or business within the United States. The 2017 QI Agreement generally provides that a QDD must assume primary withholding responsibility for purposes of chapters 3 and 4 and section 3406 for all payments it makes as a QDD and that a QDD is subject to withholding on dividends (including deemed dividends) other than dividends the QDD receives in its equity derivatives dealer capacity in calendar year 2017. The 2017 QI Agreement requires that a QI must act as a QDD for any securities lending or sale-repurchase transaction it enters into that is a section 871(m) transaction unless it is acting as an intermediary in the transaction. The 2017 QI Agreement also provides rules for how a QDD calculates its section 871(m) amount and determines its QDD Tax Liability and its requirements to report payments on Forms 1042-S. For further information on the requirements for QIs to act as QDDs and for withholding on payments of dividend equivalents and on dividends paid to QDDs, see §§1.1441-1(e)(6) and 1.871-15. Finally,

the 2017 QI Agreement permits a QI to act as a qualified securities lender (QSL) in accordance with Notice 2010-46, 2010-24 I.R.B. 757, but only to the extent that a QI acts as an intermediary with respect to payments of substitute dividends when the QI is not acting as a QDD, and only for 2017.

Following the publication of the 2017 QI Agreement, the Treasury Department and the IRS published a series of notices that deferred the full application of certain provisions of the section 871(m) regulations, including certain of the requirements applicable to QDDs, and the requirement for withholding on payments of dividends received by QDDs in their equity derivatives dealer capacity. These notices also extended the allowance for QIs to continue to act as QSLs and apply the provisions of Notice 2010-46, Part III after 2017. Most recently, on September 12, 2022, the Treasury Department and the IRS published Notice 2022-37, 2022-37 IRB 234, which extended the prior transition relief for another two years, generally through calendar year 2024. The portions of Notice 2022-37 that are relevant to the 2023 QI Agreement are discussed herein.

Similar to the 2017 QI Agreement, Part V of Appendix I to the 2023 QI Agreement reserves on the factual information required to be reported for a QDD with the periodic certification, and Appendix II to the 2023 QI Agreement does not include a sample of QDD accounts. This information is anticipated to be added to the 2023 QI Agreement in a notice or revenue procedure that will set forth a rider to include this information and any changes to the requirements of QDDs deemed necessary.

For the QDD provisions, the 2023 QI Agreement generally retains the provisions of the 2017 QI Agreement with some clarifications, including some guidance for QDDs that are a partnership or a branch of partnership (either, a “QDD Partnership”). The 2023 QI Agreement also reflects portions of prior Frequently Asked Questions (FAQs) to supplement the 2017 QI Agreement, which are available at: <https://www.irs.gov/businesses/corporations/qualified-intermediary-general-faqs> and Notice 2022-37. Consistent with the 2017 QI Agreement, if a QI acts as a QDD with respect to the home office or branch, the home office or branch, as

applicable, must act as a QDD for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities, excluding any payments made or received to the extent treated as effectively connected with the conduct of a trade or business within the United States. It may not act as a QDD with respect to any other payments. It is expected that additional guidance will be provided regarding dividend equivalents and QDDs in the future. Below is a summary of the significant changes from the 2017 QI Agreement relating to section 871(m).

(1) *QSL*. Notice 2022-37 extended the period that withholding agents may apply the QSL rules provided in Notice 2010-46, Part III, for U.S. source substitute dividend payments made in calendar year 2023 and 2024. Under the 2023 QI Agreement, a withholding agent may not act as a QSL for payments made after calendar year 2024. Until December 31, 2024, if a QI that is not acting as a QDD acts as a QSL, it must act as a QSL and assume primary withholding responsibility (including Form 1099 reporting) for all substitute dividends received and paid by the QI when acting as an intermediary or dealer with respect to securities lending and similar transactions. A QI that acts as a QDD may not act as a QSL, except as described in the prior sentence with respect to payments on securities lending or sale-repurchase transactions for which the QI has determined that it is acting as an intermediary. QIs acting as intermediaries (but not as QSLs) for substitute dividends must also assume primary withholding responsibility with respect to all substitute dividends when acting as intermediaries.

(2) *Reporting and compliance*.

(a) *Reporting*. Under the 2023 QI Agreement, a QDD must assume primary chapter 3 and chapter 4 withholding and reporting responsibility and primary Form 1099 reporting and backup withholding responsibility under section 3406 for payments made as a QDD with respect to potential section 871(m) transactions. In addition, a QI acting as a QDD (other than a QDD that is a foreign branch of a U.S. financial institution and as modified for QDD Partnerships, discussed below)

remains liable for its QDD Tax Liability and must report that liability on the appropriate U.S. tax returns. U.S. financial institutions and U.S. partners of any QDD Partnership must pay appropriate U.S. taxes on the relevant QDD’s activities. The 2023 QI Agreement clarifies that a QI that is a QDD (or has a branch that is a QDD) should file (1) a Form 1120 if it is a domestic corporation, (2) a Form 1120-F if it is a foreign corporation, or (3) a Form 1065 if it is a partnership. In addition, all QDD Partnerships must file Forms 1042-S with respect to any amounts under section 3.09 of the 2023 QI Agreement, as modified for a QDD Partnership, allocated to each of their foreign partners. The Form 1120-F or 1065, as applicable, must be filed whether or not it would have to be filed if the entity were not a QDD (for example, a foreign corporation cannot rely on the exceptions to filing in the Form 1120-F). Although the Form 1065 does not have a Schedule Q, each QDD of a QDD Partnership must provide comparable information, as detailed in section 7.01(C) of the 2023 QI Agreement.

(b) *Compliance*. While a QDD is not required to perform a periodic review for calendar years 2023 and 2024 with respect to its QDD activities, the 2023 QI Agreement requires a QDD to certify, as part of its periodic certification, that it made a good faith effort to comply with the section 871(m) regulations and relevant provisions of the 2023 QI Agreement. The 2023 QI Agreement clarifies that in order to rely on the good faith effort standard, a QI must provide the information previously specified by FAQ #19 – Certifications and Periodic Reviews for the 2017 QI Agreement.

In addition, the 2023 QI Agreement adds that a QDD must include information about dividends that are received in its equity derivatives dealer capacity on its withholding statement for calendar years 2023 and 2024 (which may be done by designating one or more accounts, if the only dividends that can be received by those accounts are in the QDD’s equity derivatives dealer capacity).

(3) *QDD partnership*. The 2023 QI Agreement provides guidance on how the agreement applies to a QDD Partnership. For example, the 2023 QI Agreement provides that the QDD Tax

Liability for each QDD of a QDD Partnership is the gross income components of the section 3.09 amounts, instead of the amounts of tax liability under section 881, and that it includes any withholding required to be done by the partnership with respect to its partners. It also ensures that QDD Partnerships and their partners retain the same dividend equivalent payment timing as non-partnerships, and therefore requires that a QDD Partnership determine the QDD Tax Liability of its partners and any dividend equivalent payments in the QDD's non-equity derivative dealer capacity on the date provided in §1.871-15(j)(2) for the applicable dividend for withholding and reporting purposes. In addition, a QDD partnership must include either withholding rate pool information or specific payee information regarding its partners when it provides a withholding statement under section 6.02 of the 2023 QI Agreement and must file a recipient specific Form 1042-S for each foreign partner in connection with its withholding requirement under section 3.09 of the 2023 QI Agreement.

(4) *Clarifications and FAQ incorporations.*

(a) *Naming convention.* Under the 2023 QI Agreement, each QDD must separately qualify and be approved for QDD status. In applying for QDD status, the applicant must follow the naming convention described in section 2.63 of the 2023 QI Agreement on its application and, if approved as a QDD, on any other tax forms or other materials for which the QDD must be identified. This is the same naming convention that was previously described in an FAQ #13 – Certifications and Periodic Reviews for the 2017 QI Agreement.

(b) *Eligible entity.* The 2023 QI Agreement revises the eligible entity definition in section 2.23 to conform to §1.1441-1(e)(6)(ii). As noted in a prior FAQ #14 – New Applications/Renewals, the “any other person otherwise acceptable to the IRS” category is not intended to function as a significant expansion of the definition of eligible entity. If an applicant does not satisfy one of the specific categories, the applicant should explain why its facts are very similar to a specified category and describe how it is regulated.

(c) *Waivers.* See section 4.04(1)(e) of this Revenue Procedure.

.03 *Stakeholder Remarks on 2017 QI Agreement.* Following publication of the 2017 QI Agreement, stakeholders requested clarification on certain of its provisions, some of which were addressed as part of FAQs (in addition to the FAQs related to QDDs referenced in section 4.02 of this Revenue Procedure). This section 4.03 summarizes those stakeholders' remarks and the related changes that are included in the 2023 QI Agreement.

(1) *Beneficiaries of certain tax-free plans as direct account holders – Sec. 2.02.* The 2017 QI Agreement defines a direct account holder as any account holder who has a direct relationship with a QI that is an FFI (which includes a flow-through entity such as a grantor trust). A stakeholder noted uncertainty in the 2017 QI Agreement on whether this definition could be applied to certain tax-free savings accounts that are treated as trusts under applicable non-U.S. local law but have a single grantor and beneficiary who is treated as the account holder for purposes of a QI's anti-money laundering/know-your-customer (AML/KYC) requirements. The stakeholder requested clarification on whether a QI may treat the sole beneficiary of the trust in these cases as a direct account holder of an account held by the trust, a treatment that would result in more favorable documentation requirements for a QI than treating the beneficiary as an indirect account holder.

In response, the IRS issued FAQ #4 – Provisions for 2017 QI Agreement, which allows a QI to treat the beneficiary of a tax-free plan as a direct account holder, provided that several requirements are met. The 2023 QI Agreement adopts the requirements of FAQ #4 in the definition of a direct account holder in section 2.02(A).

(2) *KYC Attachments as part of QI agreement – Sec. 2.03.* Unlike QI agreements that preceded the 2017 QI Agreement, the 2017 QI Agreement was not printed and signed in hard copy. As a result, the 2017 QI Agreement did not include the references to “KYC Attachments” for purposes of the IRS-approved attachments applicable to a QI that had been affixed to prior QI agreements. Due to this change, a stakeholder raised its

concern that the 2017 QI Agreement did not incorporate the KYC Attachments relevant to a QI. As a result, the IRS issued FAQ #3 – Provisions for 2017 QI Agreement, which states that the IRS did not intend to change the applicability of the approved KYC Attachments in the 2017 QI Agreement, and that QIs may treat an approved KYC Attachment as incorporated into their agreements. The 2023 QI Agreement incorporates this FAQ by defining “Agreement” to include the know-your-customer rules included in a country attachment on IRS.gov relevant to the QI (or a branch of the QI).

(3) *Joint account treatment and certification of chapter 4 status – Sec. 4.05.* Under section 4.05(A)(1) of the 2017 QI Agreement, a foreign partnership or trust to which a QI applies joint account treatment must have a chapter 4 status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to a QI, an exempt beneficial owner, or an NFFE, or it must be covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under §1.1471-5(a). Additionally, a QI is required to obtain from each partnership or trust a certification indicating that the partnership or trust maintained a permissible chapter 4 status during the QI's entire certification period and must, as part of Appendix I to the 2017 QI Agreement, indicate that it was provided these certifications.

Stakeholders remarked that requiring QIs to obtain chapter 4 certifications for each certification period is burdensome given the significant number of partnerships and trusts to which many QIs apply joint account treatment. The stakeholders noted that, aside from this requirement, a withholding agent or QI may continue to rely on a chapter 4 status represented on a Form W-8IMY from a partnership or trust until the QI has reason to know or actual knowledge that it is unreliable or incorrect (and which a partnership or trust must otherwise update when applicable).

In response, the IRS released FAQ #11 – Certifications and Periodic Reviews. This FAQ allows a QI to rely upon a valid Form W-8IMY it has on file (and which a QI may rely on under section 5.10 of the

2017 QI Agreement) to determine a permissible chapter 4 status of a partnership or trust for purposes of section 4.05 of the 2017 QI Agreement. Thus, if a QI properly relies on a Form W-8IMY described in the previous sentence, it is not required to obtain an additional certification of chapter 4 status from the partnership or trust. Consistent with the FAQ, the 2023 QI Agreement omits the requirement included in the 2017 QI Agreement for a QI to obtain the additional certifications regarding the chapter 4 statuses of partnerships and trusts for purposes of section 4.05 and the related requirement to make the representation in Appendix I that it received these certifications.

(4) *Reporting limitation on benefits category – Sec. 5.03.* The 2017 QI Agreement requires QIs to collect and report on Forms 1042-S the specific category of the limitation on benefits (LOB) provision claimed by an entity account holder. A stakeholder requested that the IRS require specific LOB information to be reported only when a QI files a recipient-specific Form 1042-S as otherwise QIs would be required to report withholding rate pool information separately for each LOB category when filing Forms 1042-S. In response to this request, section 5.03(B) of the 2023 QI Agreement clarifies that QIs are required to report the specific LOB category claimed by an entity account holder only on a recipient-specific Form 1042-S. See also section 8.02(P) of the 2023 QI Agreement and section 4.03(7) of this Revenue Procedure.

(5) *Validity standards for documentation – 5.10(B).* Under section 5.10(B) of the 2017 QI Agreement (providing validity standards for reliance on documentation), a QI that is a financial institution, an insurance company, or a broker or dealer in securities has reason to know that documentation provided by a direct account holder is incorrect or unreliable only as prescribed in §1.1441-7(b)(3). Section 1.1441-7(b)(3) cross-references §1.1441-7(b)(4) through (b)(9), which provides requirements for reliance on documentation for claims of foreign status and reduced withholding under an income tax treaty. Section 1.1441-7(b)(5)(i) provides that a withholding certificate furnished to establish foreign status is incorrect or unreliable if the withholding agent has

a current residence or mailing address as part of its account information that is an address in the United States. For an account holder claiming treaty benefits based on documentary evidence, §1.1441-7(b)(9)(i) provides that documentary evidence is unreliable or incorrect if the withholding agent has a current mailing or current permanent residence address for the direct account holder (whether or not on the documentary evidence) that is outside the applicable treaty country or has no permanent residence address for the account holder.

Stakeholders noted that the cross-reference to §1.1441-7(b)(3) broadened the validity standard applicable to a claim of foreign status from that included in prior versions of the QI agreement, which required a QI to treat the claim as unreliable or incorrect based on having a U.S. address for an account holder (rather than a U.S. address in the account information). Stakeholders also remarked that by requiring a permanent residence address for an account holder claiming treaty benefits based on documentary evidence, the 2017 QI Agreement imposed a further requirement for reliance on a treaty claim not included in prior QI agreements.

In response, the IRS issued FAQs #1 and #2 – Provisions for 2017 QI Agreement. FAQ #1 states that a QI is required to treat a Form W-8 provided by a direct account holder as unreliable for purposes of a claim of foreign status if the QI has a U.S. mailing or permanent address for the account holder. Additionally, FAQ #2 states that the IRS would not require a QI to re-document a direct account holder claiming treaty benefits for purposes of section 5.10(B) of the 2017 QI Agreement, provided that it had documented the account holder before January 1, 2018, in accordance with the prior guidance applicable to a QI. For a direct account holder claiming treaty benefits and documented on or after January 1, 2018, FAQ #2 did require that a QI have a permanent residence address for the direct account holder in the jurisdiction associated with the documentary evidence.

Section 5.10(B) of the 2023 QI Agreement incorporates the conditions specified in both FAQs for a QI's validity requirements for relying on documentation. Additionally, as section 5.10(A) of

the 2017 QI Agreement included only a limited number of cross references to regulations covering the validity requirements for withholding agents, the 2023 QI Agreement provides additional cross references to the specific provisions of those regulations and reorganizes section 5.10 with additional subsections for easier reference. Section 5.10(A) also includes cross references to regulations addressing general validity standards applicable to documentation for purposes of sections 1446(a) and (f).

(6) *Curing hold mail instruction – Sec. 5.10(D).* In 2017, in TD 9808, 82 FR 29719, the Treasury Department and the IRS promulgated temporary regulations (the 2017 temporary regulations), which allow a withholding agent to treat an address subject to a hold mail instruction as a beneficial owner's or account holder's permanent residence address, provided that the withholding agent obtained documentary evidence establishing the person's residence in the country for which the person claimed to be a resident for tax purposes. Comments received on the 2017 temporary regulations requested that the hold mail rule be eliminated or otherwise that a withholding agent be allowed to rely on documentary evidence merely establishing a person's foreign status (including documentary evidence that does not indicate an address). With respect to the 2017 QI Agreement, a stakeholder requested similar relief for QIs that receive addresses subject to hold mail instructions from their account holders.

In 2020, in TD 9890, 85 FR 192, the Treasury Department and the IRS published final regulations (the 2020 final regulations) that modify the hold mail rules set forth in the 2017 temporary regulations to allow a withholding agent to treat an account holder's address subject to a hold mail instruction as a permanent residence address if the withholding agent obtains documentary evidence that supports the person's claim of foreign status or, for a claim of treaty benefits, the person's residence in the country where the benefits are claimed. For these purposes, the 2020 final regulations allow a withholding agent to rely on documentary evidence described in §1.1471-3(c)(5)(i), without regard to whether the documentation contains a permanent residence address.

Section 5.10(D) of the 2023 QI Agreement includes the same requirements as the 2020 final regulations regarding when a QI may treat an address subject to a hold mail instruction as a permanent residence address.

(7) *Furnishing recipient-specific Form 1042-S to account holder – Sec. 8.02.* When overwithholding is applied to a payment made to a QI’s account holder and the QI does not apply for a collective refund, the 2017 QI Agreement requires the QI to provide a recipient-specific Form 1042-S when requested by the account holder. In response to this requirement, stakeholders raised various concerns. Some stakeholders requested a specified time limitation regarding when an account holder should be able to obtain a recipient-specific Form 1042-S from a QI. Additionally, a stakeholder further requested that QIs not be required to issue a recipient-specific Form 1042-S to an account holder that does not provide a U.S. TIN. Lastly, another stakeholder noted that an account holder may need a Form 1042-S to support a credit for withholding on its U.S. income tax return even when no overwithholding occurred.

Notice 2022-23 proposed a modification to the QI agreement for the issuance of a recipient-specific Form 1042-S for a payment subject to withholding on a PTP distribution or under section 1446(f). This modification would require a QI to provide a recipient-specific Form 1042-S to a foreign partner for a payment in those cases only when the partner provides its U.S. TIN (or indicates it has applied for a TIN) to the QI and requests the form within three calendar years of the year of the payment for which the form is requested. Comments on this proposed requirement questioned whether a QI should in all cases defer issuing a Form 1042-S until the account holder provides its U.S. TIN to the QI.

In response to concerns and to broaden the proposed modification in Notice 2022-23 to cover additional payments subject to withholding, section 8.02(P) of the 2023 QI Agreement generally requires a QI to provide an account holder with a recipient-specific Form 1042-S if the account holder makes a written request for the form within two calendar years following the year of the payment for which the form is requested. If, however, a QI files a

Form 1042-S to report a payment subject to section 1446(a) or (f) withholding with respect to an account holder that requests a Form 1042-S for the same calendar year, the request must be made in writing within three calendar years of the year of the payment, and the QI must provide the account holder with a separate Form 1042-S for each amount reportable on Form 1042-S that was paid to the account holder for the calendar year.

The three-year period referenced in the preceding sentence is intended to provide a foreign account holder additional time to request a Form 1042-S due to its own requirement to file a U.S. income tax return to report an amount subject to section 1446(a) or (f) withholding, which applies regardless of whether its tax liability on the payment was fully satisfied through the withholding. Also, since an account holder may be required to file a U.S. income tax return in those and certain other cases, even when not requesting a refund of overwithholding, the 2023 QI Agreement does not limit a QI’s requirement to issue a recipient-specific Form 1042-S to cases of overwithholding. Additionally, because the IRS requires that a Form 1042-S used to support an account holder’s credit for withholding claimed on an income tax return include the account holder’s U.S. TIN, the 2023 QI Agreement omits the allowance in Notice 2022-23 that permitted the account holder to represent to a QI that it had applied for a U.S. TIN when requesting a recipient-specific Form 1042-S. The requirement for an account holder’s U.S. TIN applies to any request for a recipient-specific Form 1042-S.

Finally, in the case of a recipient-specific Form 1042-S issued by a QI to an account holder of a disclosing QI, the 2023 QI Agreement requires that the QI also issue a recipient copy of the Form 1042-S to the disclosing QI. This requirement, which was not included in Notice 2022-23, was also added to the 2023 instructions for Form 1042-S for a withholding agent making payments of PTP distributions or amounts realized to a QI acting as a disclosing QI.

(8) *Certification due date for third-year review – Sec. 10.03.* The 2017 QI Agreement requires a QI conducting a periodic review for the third year of a certification

period to submit its periodic certification by December 31 of the year following the end of the certification period. Citing a QI’s dependence on other parties in completing a periodic review, a stakeholder requested that the IRS allow QIs selecting the third year of a certification period for their periodic reviews to have until June 30 of the second year following the certification period to submit their periodic certifications. The 2023 QI Agreement retains the December 31 due date included in the 2017 QI Agreement. A QI, may, however, seek an extension to this due date, which will be considered on a case-by-case basis by the IRS and granted under appropriate circumstances.

(9) *Standards of independence for external reviewers – Sec. 10.04.* A QI may use either an internal or external reviewer to conduct the periodic review required by section 10.04 of the 2017 QI Agreement. The 2017 QI Agreement generally describes the standard of independence required of an external reviewer by specifying that the reviewer cannot review systems, policies, or procedures that the reviewer (or the reviewer’s firm) was involved in designing, implementing, or maintaining for a QI. Similarly, the preamble to the 2017 QI Agreement states that a reviewer’s independence should be determined on a firm-wide basis and that the reviewer must have sufficient independence to objectively conduct the review and cannot review his or her own work or the work of others in the reviewer’s firm.

A stakeholder requested clarification on the 2017 QI Agreement’s standard of independence applicable to an external reviewer and raised questions concerning the application of the standard in certain scenarios. In consideration of this request and that the 2017 QI Agreement may have prescribed an independence standard that goes beyond external reviewers’ professional standards, the IRS issued FAQ #2 – Certifications and Periodic Reviews. The FAQ states that the IRS will allow an external reviewer of a QI to apply the same standards of independence that would otherwise apply to its engagement to conduct the periodic review (such as an engagement to perform “agreed upon procedures”). In Section 10.04(A)(2), the 2023 QI Agreement adopts the allowance provided in FAQ #2 for purposes of the

standard of independence for an external reviewer.

(10) *Final certification and periodic review for terminating QIs – Sec. 11.05.* Section 11.02(B) of the 2017 QI Agreement requires a QI terminating its QI agreement to submit a final certification within six months of the date of termination regardless of whether a periodic review has been completed for the portion of the certification period preceding termination. For a case in which a QI terminates its QI agreement (predecessor QI) and merges into or is acquired by another QI that assumes the predecessor QI's obligations relating to the predecessor QI's QI agreement (successor QI), section 11.05 of the 2017 QI Agreement provides that either QI must deliver a notice of termination and merger to the IRS. Additionally, the successor QI must provide the predecessor QI's final certification and include the predecessor QI in its periodic review following the merger.

After publication of the 2017 QI Agreement, a stakeholder requested that the IRS establish a coordinated approach for QIs to conduct periodic reviews and make periodic certifications following a merger of QIs or an acquisition of a QI by another QI to avoid duplicative certifications and periodic reviews. The stakeholder suggested that the IRS allow separate certifications to be made by the predecessor QI and successor QI or a consolidated certification that covers both entities to be submitted by the successor QI. In the case of a consolidated certification, the stakeholder requested that the deadline for the successor QI to submit a certification for the predecessor QI be deferred from the deadline for a terminating QI's final certification to align with the deadline for the successor QI's next periodic certification. The stakeholder also requested that, in the event of a merger or acquisition, the IRS require only one periodic review to be conducted by the successor QI, which would cover both entities for the final certification period of the predecessor QI.

Similar to the 2017 QI Agreement, the 2023 QI Agreement provides that a QI terminating its QI agreement must submit a final certification within six months of termination. The 2023 QI Agreement specifically provides, however, that if a QI terminates its QI agreement in the final year of

a certification period, the QI must submit a periodic review report covering one of the two years before the year of termination that meets the requirements of section 10.06, unless the QI is granted a waiver pursuant to section 10.07. Otherwise, no periodic review is required for the final certification period of a QI terminating its QI agreement.

In consideration of the stakeholder remarks above, the 2023 QI Agreement includes certain changes to specify the requirements for a QI's termination that are applicable to a predecessor QI and successor QI. The 2023 QI Agreement provides that if a predecessor QI merges into or is acquired by a successor QI and the predecessor QI is required to submit a periodic review report due to its termination, the predecessor QI may satisfy this requirement through a combined periodic review.

Under the 2023 QI Agreement, a combined periodic review is a review that covers one of the two years before the year of the predecessor QI's termination and that includes accounts of both the predecessor QI and successor QI for purposes of the review procedures in section 10.05 relating to documentation and withholding. This allowance should provide for a reduced number of accounts to be reviewed when a QI's reviewer applies a sampling methodology. See Appendix II of the 2023 QI Agreement for requirements for a combined periodic review based on a sampling of accounts.

Notwithstanding the performance of a combined periodic review, the predecessor QI and successor QI must make separate certifications for the period covered by the combined periodic review. A predecessor QI may, however, obtain a six-month extension from the deadline to submit its final certification under section 11.02(B) of the 2023 QI Agreement, provided that the request for extension indicates that it is being made due to the combined periodic review and is delivered to the IRS before the deadline for the final certification under section 11.02(B).

(11) *Waiver of periodic review for QI assuming withholding on substitute interest – Appendix I.* A QI may seek a waiver of the requirement to conduct a periodic review if the eligibility requirements in section 10.07(B) of the 2017 QI

Agreement are met. Section 10.07(C) of the 2017 QI Agreement also requires a QI seeking a waiver to provide the information described in Appendix I of the 2017 QI Agreement. For a QI assuming primary withholding responsibility on payments of substitute interest, Part VI of Appendix I to the 2017 QI Agreement requires the QI to provide certain information regarding these payments as part of its periodic certification.

A stakeholder noted that a periodic review must be completed for QIs to provide certain information requested in Part VI of Appendix I. Because this information is required even when a QI requests a waiver of the periodic review, a QI assuming primary withholding responsibility on payments of substitute interest would be unable to request a waiver. In response, the IRS issued FAQ #12 – Certifications and Periodic Reviews, which states that QIs assuming primary withholding responsibility for payments of substitute interest and that are eligible for a waiver of the periodic review requirement do not need to complete Part VI of Appendix I of the 2017 QI Agreement. The 2023 QI Agreement incorporates this allowance in the general instructions to Appendix I.

.04 *Compliance Requirements for QIs.* The 2017 QI Agreement sets forth review steps in sections 10.05(A) through (E) for a QI's reviewer to apply in conducting the periodic review of a QI. These steps relate to a QI's compliance with its documentation, withholding and reporting requirements under chapters 3, 4 and 61 (including for payments of substitute interest and QDD activities) and related provisions of the 2017 QI Agreement. Appendix I to the 2017 QI Agreement includes the certifications and the factual information to be furnished by a QI and the material failures and events of default that a responsible officer must consider in making a QI's periodic certifications. Appendix I further includes information and representations for a QI applying for a waiver of its periodic review requirement. Appendix II of the 2017 QI Agreement describes statistical sampling procedures that a QI's reviewer may use in conducting a periodic review, which take into account the review steps set forth in section 10.05 of the 2017 QI Agreement.



The 2023 QI Agreement largely incorporates the review steps and compliance requirements in the 2017 QI Agreement and adds to those requirements for purposes of a QI's responsibilities under sections 1446(a) and (f) which, as described in section 4.01 of this Revenue Procedure, were not included in Notice 2022-23 (except for material failures and events of default relating to sections 1446(a) and (f)). This section 4.04 sets forth a summary of the significant revisions made to section 10 and Appendices I and II of the 2017 QI Agreement that are included in the 2023 QI Agreement relating to a QI's requirements under sections 1446(a) and (f) and other requirements that the Treasury Department and IRS have determined are appropriate to add to the 2023 QI Agreement for evaluating a QI's compliance. This section 4.04 also describes new Appendix III of the 2023 QI Agreement.

Although the 2023 QI Agreement adds certain review steps and compliance procedures for QIs, the 2023 QI Agreement does not amend the allowance that a QI's periodic review may be conducted for any calendar year covered by the certification period. Thus, a QI acting as a QI for purposes of withholding under section 1446(a) or (f) (in addition to its other withholding responsibilities as a QI) may select any year of its certification period for the periodic review to the same extent permitted under the 2017 QI Agreement.

(1) *Revisions to section 10 of the QI agreement.*

(a) *Periodic review procedures.* The 2023 QI Agreement expands the scope of the periodic review procedures in section 10.05 of the 2017 QI Agreement to include a QI's requirements under sections 1446(a) and (f) and other withholding on PTP distributions. For this purpose, the procedures include a review of documentation associated with QI accounts receiving PTP distributions and amounts realized from the sale of PTP interests to determine any documentation failures and underwithholding on those payments. A review step is specifically included to determine any underwithholding applicable to a QI acting as a disclosing QI. This step requires a reviewer to compare copies of the Forms 1042-S issued by a QI's withholding agent to the QI's account holders to determine whether the

withholding reported was sufficient based on the results of the documentation review in section 10.05(A). A review step is also added for purposes of a QI's compliance with the reporting required under section 8.07 of the 2023 QI Agreement. Another review step is added to confirm that a QI did not apply the joint account option for purposes of section 1446(a) or (f) (a restriction consistent with a proposed modification in Notice 2022-23).

The review steps include certain other changes from the 2017 QI Agreement. Review steps are added to determine whether a partnership or trust to which a QI applies the joint account option has a permitted chapter 4 status and, more generally, that a review for underwithholding in these cases is performed when a QI assumes withholding (in addition to when a QI provides withholding rate pools). See section 4.03(1) of this Revenue Procedure and sections 10.05(B) and (C) of the 2023 QI Agreement. For the review steps for payments included in withholding rate pools, section 10.05(B) indicates that the last payment of each income type made by the QI for the year may (at a minimum) be reviewed for determining any underwithholding. For a QI acting as a QSL or otherwise acting as an intermediary for substitute dividends, a review step is added in section 10.05(C) for the requirement that a QI assume withholding on all such payments (with a similar review step added for a QI assuming withholding on substitute interest payments). For section 10.05(D), a review step is added for a reviewer to determine whether a QI failed to report with respect to any of its U.S. account holders. Finally, certain descriptions of review steps include a limited number of non-substantive changes for clarification.

(b) *Designating compliance QI to execute Form 872.* Under the 2017 QI Agreement, two or more QIs that are members of a group of entities under common ownership may establish a consolidated compliance group (CCG) upon approval by the IRS. Each QI that is a member of a CCG (CCG member) must designate a QI (Compliance QI) in the group to act on its behalf for purposes of conducting a consolidated periodic review and making a periodic certification. Additionally, a Compliance QI must agree to be jointly

and severally liable for the obligations and liabilities relating to the QI agreement of any CCG member for the period covered by the CCG.

The 2023 QI Agreement adopts the 2017 QI Agreement's provisions regarding CCGs and adds a requirement that each CCG member designate, in writing, the Compliance QI to act as its agent to execute Form 872, *Consent to Extend the Time to Assess Tax*, for extending the period to assess tax relevant to the 2023 QI Agreement. As part of this requirement, a Compliance QI must retain these designations and its agreement with the CCG members to act as their agent. The IRS anticipates that these requirements will provide a more efficient process for executing and providing Forms 872 requested as part of an IRS review of a CCG's compliance or consolidated review plan.

(c) *Submission of periodic review report.* The 2017 QI Agreement generally requires the responsible officer of a QI to arrange for the performance of a periodic review, the results of which must be documented in a written report addressed to the responsible officer. Section 10.06 of the 2017 QI Agreement does not require a QI to submit the periodic review report with its periodic certification absent an IRS request for the report. However, the IRS considers its analysis of a periodic review report integral to ensuring a QI's compliance (and thus typically requests the reports in its reviews). For efficiency, the 2023 QI Agreement requires QIs to submit a copy of their periodic review report with their periodic certification.

(d) *Submission of remediation plan.* Section 10.03 of the 2017 QI Agreement requires a QI to submit a qualified certification in accordance with Part II.B of Appendix I when it has identified a material failure that has not been corrected as of the date of the periodic certification or has identified an event of default applicable to the certification period (and which the QI must disclose). Under Part II.B.3 of Appendix I of the 2017 QI Agreement, a QI must take appropriate actions to prevent such failures from recurring and may be required to provide the IRS with a written plan to correct each failure.

The IRS views remediation plans as critical to ensuring that all QIs institute appropriate and timely actions to

address any material failures and events of default. As a result, the 2023 QI Agreement requires a QI that submits a qualified certification to complete the remediation plan information detailed in Part II.B.3 of Appendix I and submit this information with the certification.

(e) *Waiver of periodic review.* Section 10.07 of the 2017 QI Agreement generally allows a QI that has not received more than \$5 million in reportable amounts in each calendar year of a certification period to apply for a waiver of its periodic review requirement. To obtain a waiver, a QI must meet the eligibility requirements set forth in section 10.07(B) of the 2017 QI Agreement and provide certain representations and factual information with its periodic certification, which are detailed in Part III of Appendix I. Additionally, a QI may not obtain a waiver when it acts as a QDD.

The 2023 QI Agreement adopts the requirements for a waiver in the 2017 QI Agreement with certain modifications. Under the 2023 QI Agreement, to be eligible to apply for the waiver a QI must, in determining whether it received more than \$5 million in reportable amounts in each calendar year of a certification period, include the amount of PTP distributions subject to withholding under chapter 3 or 4. Additionally, in Part III of Appendix I of the 2023 QI Agreement, a QI must provide specified information regarding its receipt of PTP distributions and amounts realized from sales of PTP interests and the amount of tax withheld under sections 1446(a) and (f). A QI must also provide the information shown on Appendix III of the 2023 QI Agreement for each year of the certification period. See section 4.04(4) of this Revenue Procedure. Finally, the 2023 QI Agreement clarifies that, although a QI acting as a QDD may not obtain a waiver, this restriction does not apply for the 2023 and 2024 years and clarifies when the curing of documentation is permitted to be reflected in the reporting of the factual information required for the waiver.

(2) *Revisions to Appendix I.*

(a) *General information with certification.* Part I of Appendix I of the 2017 QI Agreement requests certain general information to be submitted with a QI's periodic certification, such as whether the QI assumed primary withholding responsibility, was part of a CCG, or applied the

agency or joint account option during the applicable certification period. The 2023 QI Agreement adds certain information requests to Part I of Appendix I regarding a QI's activities related to withholding under sections 1446(a) and (f).

(b) *Certification of internal controls.* Part II.A of Appendix I of the 2017 QI Agreement contains the certification of internal controls that a QI is required to make for a certification period and a list of material failures and events of default a QI must identify (when applicable). The 2023 QI Agreement adds a new certification regarding a QI's procedures for complying with sections 1446(a) and (f) and (more generally) that the QI has acted only to the extent permitted under the QI agreement. Thus, for example, a QI would not be able to make this certification if it represents its status as a QI with respect to an amount realized paid to an account holder for an interest in a partnership that is not a PTP. The 2023 QI Agreement also adds material failures and an event of default specific to sections 1446(a) and (f) to Part II of Appendix I. The material failures added to Part II.D of Appendix I are as proposed in section 10.03 of Notice 2022-23, with the addition of a material failure for a QI failing to comply with section 5.01(A) of the 2023 QI Agreement in requesting U.S. TINs from account holders. See section 4.01(1) of this Revenue Procedure. Part II.D of Appendix I of the 2023 QI Agreement also reflects the 2023 and 2024 transitional relief for section 871(m) purposes discussed in section 4.02 of this Revenue Procedure by referencing a QI or QDD's material failures based on a good faith standard.

(c) *Part IV: chapters 3, 4, and 61.* Part IV of Appendix I of the 2017 QI Agreement generally sets forth factual information for purposes of chapters 3, 4, and 61 (and backup withholding under section 3406) that QIs are required to provide regarding their accounts, documentation of account holders, withholding, and reconciliation of the reporting of payments made and withholding. The 2023 QI Agreement generally includes the factual information included in Part IV of the 2017 QI Agreement and, to coordinate with new Part VII of Appendix I of the 2023 QI Agreement, specifically excludes the factual information regarding PTP-related payments

that is reported in Part VII. The factual information relevant to PTP distributions attributable to amounts subject to withholding under chapters 3 and 4 is, however, to be reported in Part IV of Appendix I of the 2023 QI Agreement. See section 4.04(2)(d) of this Revenue Procedure (directly below) for the scope of reporting in new Part VII.

Part IV of Appendix I to the 2023 QI Agreement also requires other new information. A chart is to be completed by QIs using the safe harbor sampling method in Appendix II for their periodic review to specify the allocation of accounts to each certainty stratum (as referenced in section II.A.3(a) of Appendix II of the 2023 QI Agreement). Part IV of Appendix I also requires QIs to provide certain information regarding documentation failures (and resulting underwithholding) on a post-cure basis (that is, by obtaining valid documentation to support reduced withholding applied by the QI) and information regarding collective refunds for which a QI did not obtain documentation supporting reduced withholding for any account holders. Finally, Part IV includes new section G, *Other Information (including reporting of U.S. account holders)*, to indicate the number of a QI's reporting failures with respect to its U.S. account holders and, for a QI acting as a QSL (or otherwise assuming primary withholding responsibility for a U.S. source substitute dividend payment), to verify that the QI assumes withholding on all such payments. See sections 10.05(C)(11) and (D) (2) through (4) of the 2023 QI Agreement for the review steps that relate to the information for new section G.

(d) *Part VII: PTP-related payments.* Part VII of Appendix I is added to the 2023 QI Agreement to set forth the factual information a QI must report when it receives payments of PTP distributions or amounts realized from sales of PTP interests on behalf of account holders during the certification period. Part VII references the payments relevant for reporting as "PTP-related payments," which are described as those payments applicable to Form 1042-S income codes 27 (PTP distributions subject to section 1446(a)), 57 (amounts realized under section 1446(f)), or 58 (PTP distribution with undetermined income), including when made to

a U.S. partner and regardless of whether the income is subject to withholding. Part VII requires a QI to provide certain payment information depending on whether it assumed primary withholding responsibility for PTP distributions or amounts realized from sales of PTP interests or whether the QI acted as a disclosing QI when not assuming the withholding on these amounts. Similar to Part IV of Appendix I, Part VII requests factual information relating to a QI's accounts, documentation, withholding, and reconciliation of payments reported. For the information relating to the review of account documentation, Part VII also applies to partners in a partnership claiming a modified amount realized under section 1446(f) and to grantors or owners of a trust. Part VII also requires information related to a QI's reporting under section 8.07 of the 2023 QI Agreement.

(3) *Revisions to Appendix II: statistical sampling procedures.* Under the 2017 QI Agreement, a reviewer performing a periodic review may generally use a sampling methodology whenever examination of all accounts within a particular class of accounts would be prohibitive due to time or expense. For this purpose, Appendix II of the 2017 QI Agreement provides safe harbor procedures covering basic sample design parameters and methodologies, including sample size, strata allocation, and projection of underwithholding. For purposes of the review procedures in sections 10.05(B) through (D), Appendix II of the 2017 QI Agreement also prescribes "spot check" procedures, which provide for a limited review of certain accounts included in the sample of accounts following the review of a QI's documentation under section 10.05(A).

Appendix II of the 2023 QI Agreement (Appendix II) adds to the procedures in Appendix II of the 2017 QI Agreement to include a sample of a QI's accounts receiving payments for which withholding may apply under sections 1446(a) and (f). For this purpose, Appendix II expands the population of accounts to be sampled to include all accounts receiving a PTP distribution or an amount realized from the sale of a PTP interest. To sample these accounts, Appendix II requires a stratum of the thirty top-dollar value accounts, as determined by the total of PTP

distributions and amounts realized from sales of PTP interests paid to an account, to be segregated from the population of accounts and reviewed (referenced as a "certainty stratum" in Appendix II). For accounts held by partnerships and trusts for which documentation with respect to their partners and grantors is relevant for determining withholding under section 1446(a) or (f), Appendix II permits a reviewer to sample partners and grantors using the same chart in Appendix II for sampling accounts to which a QI applies the joint account option.

The 2023 QI Agreement includes a limited number of other changes in Appendix II. As discussed in section 4.03(10) of this Revenue Procedure, the 2023 QI Agreement permits a combined periodic review in certain cases of a merger of QIs or an acquisition of a QI by another QI (with QIs in those cases referenced as "predecessor" and "successor" QIs). Appendix II includes additional certainty strata for sampling accounts of a predecessor QI in a combined periodic review. The additional strata are to contain the fifteen top-dollar value accounts of the predecessor QI as measured by the total of reportable amounts paid to foreign recipients, reportable payments paid to U.S. recipients, PTP distributions paid to accounts, and amounts realized from sales of PTP interests paid to accounts. The remainder of the predecessor QI's accounts, and all the successor QI's accounts, are then placed into the remaining strata identified in Appendix II for further sampling. Appendix II also incorporates the provisions of certain FAQs to the 2017 QI Agreement that detail the allocation of sample units over strata and the maximum sample size.

For projecting underwithholding in a sample, the 2017 QI Agreement states that the IRS will determine if a projection of underwithholding is necessary when it reviews a QI's periodic certification. If projection is necessary, the IRS will instruct the QI or the QI's reviewer on the use of the procedures in Rev. Proc. 2011-42 to project underwithholding. Appendix II also incorporates the procedures of Rev. Proc. 2011-42 but provides more detailed explanations of the projection process and an example that illustrates the stratification of a QI's accounts to accurately project underwithholding.

Appendix II also provides a revised provision for the IRS to project underwithholding on a post-cure basis, and for this purpose, Appendix II allows a QI to continue to cure invalid documentation up to 60 days after the date on which the IRS proposes a deficiency.

Finally, Appendix II specifies the number of accounts includible in a spot check for a certainty stratum (other than when using optional further stratification) and for a stratum that includes accounts failing the documentation review (limited to when underwithholding would result).

(4) *Addition of Appendix III.* Appendix III is added to the 2023 QI Agreement to assist the IRS in determining whether Forms 1042 and 1042-S were filed accurately by a QI for the years of a certification period not covered by a periodic review (or all such years if a waiver of the periodic review is requested). This Appendix requires QIs to provide, for each applicable year, certain information reported on Form 1042 and Forms 1042-S (including amended forms), by box and line, and reconcile certain information included on the Forms 1042-S issued to the QI to the Form 1042 and Forms 1042-S filed by the QI (and between the Form 1042 and Forms 1042-S filed by the QI). QIs will be required to upload a completed copy of Appendix III as part of their periodic certifications using the attachment feature in the Qualified Intermediary Application and Account Management System (QAAMS).

.05 *Miscellaneous Changes.* This section 4.05 describes a limited number of modifications to the 2017 QI Agreement included in the 2023 QI Agreement that are unrelated to a QI's requirements under sections 1446(a) and (f), stakeholder remarks on the 2017 QI Agreement, or to provisions of the 2023 QI Agreement addressing requirements for QDDs and QSLs.

(1) *Adjustments for overwithholding.* The 2017 QI Agreement permits a QI to apply the reimbursement and set-off procedures in §§1.1461-2 and 1.1474-2 to adjust overwithholding and describes certain deadlines in these regulations for applying the procedures for the repayment of overwithheld tax to an account holder and for filing a Form 1042-S to report the overwithholding and repayment.

On December 18, 2018, the Treasury Department and the IRS published a notice of proposed rulemaking (the NPRM) in the Federal Register, 83 FR 64757, to reduce certain taxpayer burdens under chapters 3 and 4. The NPRM would modify the reimbursement and set-off procedures under §§1.1461-2 and 1.1474-2 to allow a withholding agent to use the extended due dates for filing Forms 1042 and 1042-S to report a repayment and claim a credit (rather than the due dates without extension under the current final regulations). The NPRM would not, however, permit a withholding agent to apply the reimbursement or set-off procedures after the date the Form 1042-S has been furnished to the beneficial owner or payee or is filed with the IRS. The NPRM permits a QI to rely on its provisions until finalization.

For consistency with the NPRM and any modifications to the final requirements of §§1.1461-2 and 1.1474-2, sections 9.01 and 9.02 of the 2023 QI Agreement cross reference §§1.1461-2 and 1.1474-2 for the timing requirements to use these procedures in lieu of the explanations of these requirements set forth in the 2017 QI Agreement.

(2) *Chapter 3 withholding rate pools.* The 2017 QI Agreement states in section 6.03(C) that a chapter 3 withholding rate pool is a payment of a single type of income subject to chapter 3 withholding that is subject to a single rate of withholding under chapter 3, and for which no chapter 4 withholding is required, on Form 1042-S. Certain prior guidance for QIs, however, included amounts reported on Form 1042-S and Form 1099 in a chapter 3 withholding rate pool (rather than only chapter 3 payments). See Rev. Proc. 2000-12, 2000-4 IRB 387. Additionally, the description of a chapter 3 withholding rate pool in §1.1441-1(e)(5)(v)(C) references no limitation to an amount subject to chapter 3 withholding. Because chapter 3 withholding rate pool information may be provided by a QI to a withholding agent for payments other than amounts subject to chapter 3 withholding (such as an amount realized or bank deposit interest), the 2023 QI Agreement does not include the reference to an “amount subject to chapter 3 withholding” for describing a chapter 3 withholding rate pool.

(3) *Defining account for substitute interest.* For a QI assuming primary withholding responsibility for payments of substitute interest, the 2017 QI Agreement includes a person receiving a payment of substitute interest in the definition of “account holder” in section 2.02 but did not define an “account” for these cases in section 2.01. The 2023 QI Agreement adds to the definition of an “account” by providing that for a QI that assumes primary withholding responsibility for a substitute interest payment, as described in section 3.03(A) of the 2023 QI Agreement, an account is treated as held with a QI for an account holder described in section 2.02 of the 2023 QI Agreement.

(4) *Communications under QI agreement.* The 2017 QI Agreement generally requires all notices sent by a QI or the IRS to be mailed via registered, first-class airmail. For better efficiency in communications between the IRS and QIs, the 2023 QI Agreement allows written notices sent by QIs to the IRS to be either mailed via registered, first-class mail or e-mailed to the IRS e-mail address specified in section 12.06. With respect to notices sent by IRS to a QI, the 2023 QI Agreement specifies that the IRS will send notices to a QI by secure e-mail to the QI’s responsible officer and other contact persons designated by the QI.

## SECTION 5. APPLICATION AND RENEWAL FOR QI STATUS

.01 *Prospective QI (Including a QI Acting as a QDD).* Before submitting the information specified in Form 14345, *Application for Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust Status*, a prospective QI (other than an NFFE that is acting as an intermediary on behalf of persons other than its shareholders and certain foreign central banks of issue) must have submitted the information specified in Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, through the FATCA registration website available at [www.irs.gov/FATCA](http://www.irs.gov/FATCA), and obtained its chapter 4 status as a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), registered

deemed-compliant Model 1 IGA FFI, or sponsoring entity of a direct reporting NFFE, as applicable, along with a global intermediary identification number (GIIN) to be used to identify itself to withholding agents and to tax administrators for FATCA reporting. A GIIN is separate from a QI-EIN.

The IRS will not enter into a QI agreement with an FFI if the IRS has not approved the know-your-customer practices and procedures for opening accounts of the jurisdiction where the FFI is located because the QI agreement as applicable to an FFI allows for the use of documentary evidence obtained under a jurisdiction’s know-your-customer practices. A list of jurisdictions for which the IRS has received know-your-customer information and for which the know-your-customer rules have been approved is available at: <http://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules>. To request approval of a jurisdiction’s know-your-customer rules, contact the KYC coordinator in the Foreign Intermediaries Program at [lbi.fi.qiwpissues@irs.gov](mailto:lbi.fi.qiwpissues@irs.gov).

A QI that is an NFFE generally is not required to be located in an approved KYC jurisdiction because an NFFE is required to collect Forms W-8 and W-9 and may not use KYC documentation. See section 5.01(B)(2) of the 2023 QI Agreement for the documentation requirements applicable to a QI that is an NFFE.

To become a QI, a prospective QI must submit the information specified in Form 14345 through QAAMS, which is accessible through the QI landing page available at: <https://www.irs.gov/businesses/corporations/qualified-intermediary-system>. An application must also include any additional information and documentation requested by the IRS. The application must establish to the satisfaction of the IRS that the applicant has adequate resources and procedures to comply with the terms of the agreement. An entity that would like to become a QI to act as a QDD must apply to enter into a QI agreement and include the information on the application relating to QDDs. If a QI (existing or new) would like a branch to act as a QDD, it must fill out a separate application for the QDD branch and be approved for QDD status.

If the IRS approves the QI application, it will notify the QI of its approval. The approval notice will include a QI-EIN for fulfilling the requirements of a QI (including a QI acting as a QDD if approved for such purpose) under the QI agreement. Similarly, if the IRS approves the QDD application, it will notify the QI of its approval.

.02 *Effective Date for Existing QIs.* A QI agreement in effect before December 31, 2022, expires on December 31, 2022, such that a QI must agree to the terms of the 2023 QI Agreement to continue its status as a QI after that date. For this purpose, a QI that seeks to renew its QI agreement with an effective date of January 1, 2023, must do so through QAAMS between January 1, 2023, to March 31, 2023. The QI will retain its QI-EIN to fulfill the requirements of a QI under chapters 3, 4, and 61 and sections 871, 881, 1446, and 3406, including making tax deposits and filing Forms 945, 1042, 1042-S, 1099, and 8966.

A QI that seeks to renew its QI agreement and also apply to act as a QDD (when not having applied previously) must supplement the renewal request by providing all of the information required by the application relating to a QDD.

.03 *Effective Date for New QI Applicants.* The effective date of the QI agreement for a new QI applicant will depend on when the QI submits its application and whether the QI has received any reportable payments before it submits its application. Beginning on January 1, 2023, a prospective QI that applies for QI status on or before March 31 of a calendar year and is approved will have a QI agreement with an effective date of January 1 of that year. If a prospective QI applies for QI status after March 31 of a calendar year and has not received a reportable payment before the date it applies for QI status and is approved, it will have a QI agreement with an effective date of January 1 of that year. If a prospective QI applies for QI status after March 31 and has received a reportable payment before the date it applies and is approved, it will have a QI agreement with an effective date of the first of the month in which its QI application is approved and the prospective QI is issued a QI-EIN. Regardless of whether a new QI applicant obtains QI status for a year after 2023, its QI agreement will

terminate upon expiration of the 2023 QI Agreement, unless renewed.

.04 *Consent for Published List of QIs.* Beginning in 2023, a QI that either applies for a QI agreement or seeks to renew its QI agreement will be required to, as part of its application or renewal, consent to have its name, status as a QI, and QI-EIN disclosed on a public list of QIs to be published by the IRS on [irs.gov](http://irs.gov). This list will be published in an effort to ensure that entities that are not QIs do not represent themselves as QIs to withholding agents.

.05 *Responsible Officer Authentication.* The IRS is in the process of transitioning QAAMS to a modernized sign-in system with applicable multi-factor authentication procedures. As a result, to log in to QAAMS, new users must register with the applicable credential service provider (CSP). Responsible officers can visit QAAMS page to create an account with the relevant CSP. When responsible officers create an account, they will be redirected to the CSP website where they will begin the credentialing process. The final step in the credentialing process requires responsible officers to provide consent for the CSP to share responsible officers' account information with the IRS. Once this consent is given, the responsible officer will be redirected to the IRS website and can access QAAMS.

Currently, users that have an existing QAAMS account may choose whether to continue to login using their IRS username and password or complete the credentialing process as described above. Beginning in the spring of 2023, all users of QAAMS will be required to have completed the credentialing process with the relevant CSP and utilize multi-factor authentication to access QAAMS.

.06 *Contact Information.* For questions regarding the QI application process, contact the Foreign Intermediaries Program at [lbi.fi.qiwpissues@irs.gov](mailto:lbi.fi.qiwpissues@irs.gov).

## SECTION 6. QUALIFIED INTERMEDIARY AGREEMENT

The text of the 2023 QI Agreement is set forth below. The IRS will not provide signed copies of the QI agreement. A reporting Model 2 FFI should apply this Agreement by substituting the term “reporting Model 2 FFI” for

“participating FFI” throughout this Agreement, except in cases where this Agreement explicitly refers to a reporting Model 2 FFI. A reporting Model 1 FFI and nonreporting Model 2 FFI treated as a registered deemed-compliant FFI should apply this Agreement by substituting the term “reporting Model 1 FFI” or “nonreporting Model 2 FFI” (as applicable) for “registered deemed-compliant FFI” throughout this Agreement, except in cases where this Agreement explicitly refers to a reporting Model 1 FFI or nonreporting Model 2 FFI treated as a registered deemed-compliant FFI.

THIS AGREEMENT is made under and in pursuance of sections 871(m), 1441, 1442, 1443, 1446, 1471, and 1472 and §§1.1441-1(e)(5) and 1.1441-1(e)(6):

**WHEREAS**, QI has submitted an application in accordance with Revenue Procedure 2022-43 to be a qualified intermediary;

**WHEREAS**, QI and the IRS desire to enter into an agreement to establish QI's rights and obligations regarding documentation, withholding, information reporting, tax return filing, deposit, and refund procedures under sections 1441, 1442, 1443, 1446, 1461, 1471, 1472, 1474, 3406, 6041, 6042, 6045, 6049, 6050N, 6302, 6402, and 6414, and tax liability under sections 871(a) and 881 for a QI that is acting as a qualified derivatives dealer (QDD), with respect to certain types of payments;

**WHEREAS**, QI represents that there are no legal restrictions that prohibit it from complying with the requirements of this Agreement; and

**WHEREAS**, if QI is a foreign financial institution (FFI), QI represents that, as of the effective date of this Agreement, it has agreed to comply with the requirements of the FFI agreement, in the case of a participating FFI (including a reporting Model 2 FFI); §1.1471-5(f)(1) or the applicable Model 2 IGA, in the case of a registered deemed-compliant FFI (other than a reporting Model 1 FFI); or the applicable Model 1 IGA, in the case of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI;

**NOW, THEREFORE**, in consideration of the following terms, representations, and conditions, the parties agree as follows:

## SECTION 1. PURPOSE AND SCOPE

**Sec. 1.01. General Obligations.** When the IRS enters into a QI agreement with a foreign person or a foreign branch of a U.S. person, that foreign person (or foreign branch) becomes a QI. QI is a withholding agent under chapters 3 and 4, and a payor under chapter 61 and section 3406, for amounts that it pays to its account holders. QI is also a withholding agent when it receives a PTP distribution for an account holder or it acts as a broker under §1.1446(f)-4 for a payment of an amount realized from the sale of a PTP interest by an account holder.

If QI is an FFI, the requirements that QI has agreed to as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI apply in addition to the requirements under this Agreement. If QI acts as a QI with respect to an account, this Agreement will reference QI's chapter 4 obligations when necessary to facilitate coordination with the QI's obligations under chapters 3, 4, and 61 and section 3406 with respect to such account holders. A participating FFI's (including a reporting Model 2 FFI) obligations are provided in the FFI agreement, a registered deemed-compliant FFI's (other than a reporting Model 1 FFI) obligations are provided in §1.1471-5(f) (1) or the applicable Model 2 IGA, and the obligations of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI are provided in the applicable Model 1 IGA. For purposes of chapter 4, QI must comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI (as applicable) in order to maintain its required chapter 4 status, as well as the requirements of a withholding agent for any payee that is a nonparticipating FFI or a NFFE that is not an account holder. If QI is an FFI, QI must also, pursuant to this Agreement, assume primary reporting responsibility for purposes of section 1472, for certain indirect account holders for which it acts as a QI. If QI is an NFFE acting on behalf of persons other than its shareholders, QI must assume primary reporting responsibility for purposes of section 1472 for any person for which it acts as a QI.

If QI acts as a sponsoring entity on behalf of a sponsored FFI (as defined in §1.1471-1(b)(121)) or sponsored direct reporting NFFE (as defined in §1.1471-1(b)(123)), it must comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity in addition to its requirements under this Agreement.

For purposes of chapters 3 and 61 and section 3406, QI must act in its capacity as a QI pursuant to this Agreement for those accounts that QI holds with a withholding agent and that QI has identified as accounts for which it acts as a QI. QI is not required to act as a QI for all accounts that it holds with a withholding agent. However, QI must, as part of its QI agreement, materially comply with the requirements of a withholding agent or payor, as applicable to a nonqualified intermediary (NQI) under chapters 3 and 61 and section 3406, for any account for which it does not (or cannot) act as a QI and for any payee that is not an account holder. If QI identifies an account as one for which it will act as a QI, it must act as a QI for all payments made to that account and obtain the documentation required under section 5 of this Agreement for such account.

When QI acts as a QI for an account and assumes primary chapter 3 withholding responsibility for payments to the account, QI must also assume primary withholding responsibility for withholdable payments made to such account for chapter 4 purposes.

For amounts subject to withholding on a PTP distribution, QI acts in its capacity as a QI when QI provides a valid withholding certificate described in section 6 of this Agreement indicating that it acts as a nominee for the distribution, provides chapter 3 withholding rate pool information with respect to the distribution under section 6.03 of this Agreement, or acts as a disclosing QI for the distribution. For an amount realized, QI acts in its capacity as a QI when QI provides a valid withholding certificate described in section 6 of this Agreement associated with the amount indicating that QI assumes primary withholding responsibility for the amount under section 1446(f), provides withholding rate pool information with respect to the amount under section 6.03

of this Agreement, or acts as a disclosing QI for the amount.

If QI acts as a QI with respect to payments of substitute interest, as described in section 3.03(A) of this Agreement, it must act as a QI and assume primary withholding responsibility for all such payments of substitute interest.

A QI is permitted to act as a QSL only until December 31, 2024. If QI that is not acting as a QDD acts as a qualified securities lender (QSL) with respect to substitute dividend payments (as defined in §1.861-3(a)(6)), QI is required to act as a QSL and assume primary withholding responsibility for all substitute dividends received and paid by QI when acting as an intermediary or dealer with respect to securities lending and similar transactions. A QI that acts as a QDD may not act as a QSL, except as described in the prior sentence with respect to payments on securities lending or sale-repurchase transactions for which the QI has determined that it is acting as an intermediary. A QI may qualify as a QDD with respect to certain payments on securities lending and sale-repurchase transactions in its qualified derivatives dealer capacity. See below for the requirements, including the eligible entity requirement and which payments are covered.

A QI that is not acting as a QSL may still act as a QI for substitute dividend payments received or paid by QI as an intermediary by assuming primary withholding responsibility for all substitute dividends received and paid by QI as an intermediary. QI also may act as a QDD for the transactions covered by the QDD regime.

The home office (as defined in section 2.43 of this Agreement) and each branch of a foreign person that intends to act as a QDD must each separately qualify and be approved for QDD status, as provided in section 1.02 of this Agreement. QDD applicants must follow the naming convention described in section 2.63 of this Agreement on their application and, if approved as a QDD, on any other U.S. tax form, schedule, statement, or other tax material and for any other tax purpose for which the QDD must be identified. A foreign branch of a U.S. financial institution may also apply for QI and QDD status provided it separately qualifies as

an eligible entity. If QI acts as a QDD with respect to the home office or branch, the home office or branch, as applicable, must act as a QDD for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities, excluding any payments made or received by the QDD to the extent the payment is treated as effectively connected with the conduct of a trade or business within the United States within the meaning of section 864. A QI may not act as a QDD with respect to any other payments. For purposes of this Agreement, any securities lending or sale-repurchase transaction (as defined in §1.871-15(a)(13)) QI enters into that is a section 871(m) transaction is treated as entered into by QI as a principal unless QI determines that it is acting as an intermediary with respect to that transaction. A QI may not act as a QDD when it receives or makes payments as an intermediary and must act as either a QI or NQI for the payment. A QI acting as a QDD must assume primary chapter 3 and chapter 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility under section 3406 for payments made as a QDD with respect to any potential section 871(m) transaction provided the amount paid is an amount subject to chapter 3 or 4 withholding or a reportable payment under chapter 61. A QI acting as a QDD (other than a QDD that is a foreign branch of a U.S. financial institution) also must satisfy its QDD tax liability as determined under section 3.09 of this Agreement. The QDD must report its withholding tax liability under chapters 3 and 4 on Form 1042. In addition, a QDD (other than a QDD that is a foreign branch of a U.S. financial institution or that is a partnership or branch of a partnership) must file a Form 1120-F and report its QDD tax liability on that form, whether or not it would be required to file if it were not a QDD. Similarly, a QDD that is a partnership or a branch of a partnership must file a Form 1065 and report its QDD tax liability on that form, whether or not it would be required to file if it were not a QDD, as well as report on Forms 1042-S with respect to its foreign partners on

amounts under section 3.09 of this Agreement as modified for a QDD that is a partnership (or branch of a partnership). A U.S. financial institution with a foreign branch that acts as a QDD must file the appropriate U.S. income tax return (e.g., Form 1120, *U.S. Corporation Income Tax Return*) for the tax year covered by this Agreement to report and pay its tax liability under chapter 1 and would not have a separate QDD tax liability. In each case, the form will be filed by the QI on behalf of its QDD(s).

A dividend or dividend equivalent is treated as received by a QDD acting in its non-equity derivatives dealer capacity if the dividend or dividend equivalent is received by a QDD acting as a proprietary trader. Transactions properly reflected in a QDD's equity derivatives dealer book are presumed to be held by a dealer in its equity derivatives dealer capacity for purposes of determining the QDD tax liability. In addition, for purposes of determining whether a dealer is acting in its equity derivatives dealer capacity, only the dealer's activities as an equity derivatives dealer are taken into account.

**Sec. 1.02. Parties to the Agreement.** This Agreement applies to:

(A) QI; and

(B) The Internal Revenue Service.

If QI is an FFI, QI can only act as a QI for an account if the branch of QI that holds the account operates in a KYC jurisdiction identified on the IRS's Approved KYC List. QI may add any jurisdiction in which it operates a branch that is not initially included in its QI application without prior IRS approval if the jurisdiction is identified on the IRS's Approved KYC List and QI updates its information on the Qualified Intermediary Application and Account Management System (QAAMS) with respect to such branch before treating such branch as a QI. Notwithstanding the preceding sentence, a QI may not add a branch that will act as a QDD through QAAMS. Instead, the branch must separately qualify and be approved for QDD status in accordance with the procedures prescribed by the IRS. A branch of a QI that is not subject to the provisions of this Agreement remains subject to the rules of chapters 3, 4, and 61 and section 3406, as provided in section 1.01 of this Agreement.

## SECTION 2. DEFINITIONS

For purposes of this Agreement, except as otherwise provided in this Agreement, the terms listed below are defined as follows:

**Sec. 2.01. Account.** "Account" or "financial account" has the meaning given to that term in §1.1471-1(b) with respect to QI's obligations for chapter 4 purposes. For other purposes under this Agreement, "account" or "financial account" means any account for which QI acts as a QI. With respect to a QI acting as a QDD, "account" means any potential section 871(m) transaction or underlying security where QDD receives payments as a principal and any potential section 871(m) transaction where QDD makes payments as a principal. With respect to a QI that assumes primary withholding responsibility for a substitute interest payment as described in section 3.03(A) of this Agreement, an account is treated as held with QI for an account holder described in section 2.02 of this Agreement.

**Sec. 2.02. Account Holder.** If QI is an FFI, an "account holder" means any person that is a direct account holder or an indirect account holder of an account that QI has identified to a withholding agent as an account for which it is acting as a QI and also includes any person that receives a U.S. source substitute dividend payment from a QI that is a QSL or is otherwise acting as an intermediary for the payment. "Account holder" also means any person that enters into or holds a potential section 871(m) transaction with a QI acting as a QDD. If QI is an NFFE acting as a QI on behalf of persons other than its shareholders, an "account holder" means any person for whom QI is acting as an intermediary with respect to a reportable payment or withholdable payment. With respect to a QI that assumes primary withholding responsibility for a substitute interest payment, as described in section 3.03(A) of this Agreement, an "account holder" includes any person that receives such a payment from the QI.

**(A) Direct Account Holder.**

A direct account holder is any account holder who has a direct relationship with QI. In the case of an NFFE acting as a QI on behalf of persons other than its shareholders, a direct account holder is

any person for whom QI is acting with respect to a reportable payment regardless of whether such person is the beneficial owner. In addition, a direct account holder includes a beneficiary of a trust that holds an account with QI provided the following requirements are satisfied:

(1) the trust is registered with the applicable government as a tax-free plan;

(2) in order to qualify as a tax-free plan, applicable non-U.S. law mandates that where the plan holds assets in a brokerage account, a trust be established for the account holder that is the sole beneficiary under the plan;

(3) the account holder maintains general control over investments in the plan and can withdraw the funds at any time;

(4) QI is required to document the account holder under applicable anti-money laundering/know-your-customer regulations or procedures; and

(5) the trust itself is not eligible for a reduced rate of withholding under an applicable income tax treaty.

**(B) Indirect Account Holder.** An indirect account holder is any account holder who does not have a direct relationship with QI, excluding a beneficiary of a trust described in section 2.02(A) of this Agreement. For example, a person that holds an account with a foreign intermediary that has a direct relationship with QI is an indirect account holder of QI. For chapter 3 and 4 purposes, an indirect account holder also includes a person holding an interest in a foreign flow-through entity that has a direct relationship with QI. A person is an indirect account holder even if there are multiple tiers of intermediaries or flow-through entities between the person and QI.

**Sec. 2.03. Agreement.** “Agreement” means this Agreement, the Appendices to this Agreement and any amendment to this Agreement in accordance with section 12.02 of this Agreement. QI’s application to become a QI, and the know-your-customer rules included in a country attachment on IRS.gov relevant to QI (or a branch of QI) are incorporated into this Agreement by reference.

**Sec. 2.04. Amount Subject to Chapter 3 Withholding.** An “amount subject to chapter 3 withholding” is an amount described in §1.1441-2(a) regardless of whether such amount is withheld upon.

Unless indicated otherwise in this Agreement, an amount subject to chapter 3 withholding includes an amount subject to chapter 3 withholding on a PTP distribution. See section 2.91(C) of this Agreement.

**Sec. 2.05. Amount Subject to Chapter 4 Withholding.** An “amount subject to chapter 4 withholding” is a withholdable payment (as defined in §1.1473-1(a)) for which withholding is required under chapter 4 or an amount for which withholding was otherwise applied under chapter 4. Unless indicated otherwise in this Agreement, an amount subject to chapter 4 withholding includes an amount subject to chapter 4 withholding on a PTP distribution. See section 2.91(C) of this Agreement.

**Sec. 2.06. Assuming Primary Withholding Responsibility.** “Assuming primary withholding responsibility” refers to when a QI assumes primary chapters 3 and 4 withholding responsibility with respect to payments of U.S. source FDAP income or assumes primary Form 1099 reporting and backup withholding responsibility. “Assuming primary withholding responsibility” further includes when QI acts as a nominee for a PTP distribution or assumes primary withholding responsibility under section 1446(f) for an amount realized from the sale of a PTP interest. A QI that assumes primary withholding responsibility assumes the primary responsibility for deducting, withholding, and depositing the appropriate amount from a payment. Generally, a QI assuming primary withholding responsibility or assuming primary backup withholding responsibility relieves the person who makes a payment to the QI from the responsibility to withhold. Notwithstanding the preceding sentence, a QI acting as a QDD (that assumes primary withholding responsibility as required by section 3 of this Agreement) remains liable for the tax under section 881 (or in the case of a partnership, its partners remain liable for tax under section 871(a) or 881, as applicable) and remains subject to withholding on all U.S. source FDAP payments with respect to underlying securities; however, a QDD (including a QDD that is a partnership or a branch of a partnership) will not be subject to withholding on amounts described in sections 3.03(A)(1) through

(3) of this Agreement, and in the case of a QDD that is a partnership or branch of a partnership, its partners will not be subject to withholding on dividends received by the QDD in its equity derivatives dealer capacity in calendar year 2023 or 2024.

**Sec. 2.07. Backup Withholding.** “Backup withholding” means the withholding required under section 3406.

**Sec. 2.08. Beneficial Owner.** A “beneficial owner” has the meaning given to that term in §1.1441-1(c)(6) with respect to an amount subject to chapter 3 withholding.

**Sec. 2.09. Broker Proceeds.** “Broker proceeds” means gross proceeds (as defined in §1.6045-1(d)(5)) from a sale that is reportable under §1.6045-1(c).

**Sec. 2.10. Chapter 3.** Any reference to “chapter 3” means sections 1441, 1442, 1443, 1461, 1463, and 1464.

**Sec. 2.11. Chapter 3 Reporting Pool.** A “chapter 3 reporting pool” means a reporting pool described in section 8.03(B) of this Agreement.

**Sec. 2.12. Chapter 4.** Any reference to “chapter 4” means sections 1471, 1472, 1473, and 1474.

**Sec. 2.13. Chapter 4 Reporting Pool.** A “chapter 4 reporting pool” means a reporting pool described in section 8.03(A) of this Agreement.

**Sec. 2.14. Chapter 4 Status.** “Chapter 4 status” means the status of a person as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE, or a passive NFFE.

**Sec. 2.15. Chapter 61.** Any reference to “chapter 61” means sections 6041, 6042, 6045, 6049, and 6050N.

**Sec. 2.16. Dealer.** A “dealer” has the meaning given to the term dealer in §1.871-15(a)(2) (*i.e.*, a dealer in securities within the meaning of section 475(c)(1)).

**Sec. 2.17. Deemed-Compliant FFI.** “Deemed-compliant FFI” means an FFI that is treated, pursuant to section 1471(b)(2) and §1.1471-5(f), as meeting the requirements of section 1471(b).

**(A) Certified Deemed-Compliant FFI.** “Certified deemed-compliant FFI” means an FFI described in §1.1471-5(f)(2) and includes a nonreporting IGA FFI but excludes a nonreporting Model 2 FFI



that is treated as a registered deemed-compliant FFI.

**(B) Registered Deemed-Compliant FFI.** “Registered deemed-compliant FFI” means an FFI described in §1.1471-5(f)(1) and includes a reporting Model 1 FFI and a nonreporting Model 2 FFI that is treated as registered deemed-compliant FFI. For purposes of this Agreement, a reference to a registered deemed-compliant FFI that is providing a chapter 4 withholding rate pool of U.S. payees includes a registered deemed-compliant Model 1 IGA FFI.

**(C) Registered Deemed-Compliant Model 1 IGA FFI.** “Registered deemed-compliant Model 1 IGA FFI” means an FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with respect to U.S. accounts as those applicable to a registered deemed-compliant FFI under §1.1471-5(f)(1), including the requirement to register with the IRS.

**Sec. 2.18. Deposit Interest.** “Deposit interest” means interest described in section 871(i)(2)(A).

**Sec. 2.19. Dividend Equivalent.** A “dividend equivalent” has the meaning given to that term in §1.871-15(c).

**Sec. 2.20. Documentary Evidence.** “Documentary evidence” means any documentation obtained under the appropriate know-your-customer rules, any documentary evidence described in §1.1441-6 sufficient to establish entitlement to a reduced rate of withholding under an income tax treaty, or any documentary evidence described in §1.6049-5(c) sufficient to establish an account holder’s status as a foreign person for purposes of chapter 61. Documentary evidence does not include a Form W-8 or Form W-9 (or an acceptable substitute Form W-8 or Form W-9).

**Sec. 2.21. Documentation.** “Documentation” means any valid Form W-8, Form W-9 (or an acceptable substitute Form W-8 or Form W-9), or documentary evidence as defined in section 2.20 of this Agreement, including all statements or other information required to be associated with the form or documentary evidence.

**Sec. 2.22. Effective Date.** For a prospective QI that applies to be a QI on or

before March 31 of a given calendar year, the effective date of this Agreement will be January 1 of that year. For a prospective QI that applies after March 31 of a given calendar year and that has not received any reportable payments before the date the application is submitted, the effective date of this Agreement will be January 1 of that year. For a prospective QI that applies after March 31 of a given calendar year and that has received a reportable payment in the calendar year before the date the application is submitted, the effective date of this Agreement will be the first of the month in which the QI application is complete and the QI has received its QI-EIN.

**Sec. 2.23. Eligible Entity.** “Eligible entity” for QDD status means a home office or branch that is a QI and that is—

**(A)** An equity derivatives dealer subject to regulatory supervision as a dealer by a governmental authority in the jurisdiction in which it was organized or operates;

**(B)** A bank or bank holding company subject to regulatory supervision as a bank or bank holding company, as applicable, by a governmental authority in the jurisdiction in which it was organized or operates and that, in its equity derivatives dealer capacity, (1) issues potential section 871(m) transactions to customers, and (2) receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued;

**(C)** An entity that is wholly-owned (directly or indirectly) by a bank or bank holding company subject to regulatory supervision as a bank or bank holding company, as applicable, by a governmental authority in the jurisdiction in which the bank or bank holding company was organized or operates and that, in its equity derivatives dealer capacity, (1) issues potential section 871(m) transactions to customers, and (2) receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued; or

**(D)** A foreign branch of a U.S. financial institution, if the foreign branch would meet the requirements of paragraph (A), (B), or (C), if it were a separate entity.

The home office or any branch that wants to be a QDD must separately meet the requirements of paragraph (A), (B), or (C) as if it were a separate entity.

Eligible entity also includes any other home office or branch that is acceptable to the IRS as provided in §1.1441-1(e)(6)(ii) (D).

**Sec. 2.24. Excepted NFFE.** “Excepted NFFE” means a person described in §1.1471-1(b)(41).

**Sec. 2.25. Exempt Beneficial Owner.** “Exempt beneficial owner” means a person described in §1.1471-1(b)(42) and includes any person that is treated as an exempt beneficial owner under an applicable Model 1 or Model 2 IGA.

**Sec. 2.26. Exempt Recipient.** For purposes of Form 1099 reporting and backup withholding, an “exempt recipient” means a person described in §1.6049-4(c)(1) (ii) (for interest, dividends, and royalties), a person described in §1.6045-2(b) (2)(i) (for broker proceeds), and a person described in §1.6041-3(q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income), for which no Form 1099 reporting is required. Exempt recipients are not exempt from reporting or withholding under chapter 3 or 4.

**Sec. 2.27. FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI.** “FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI” means—

**(A)** For a participating FFI or an FFI that agrees to be treated as a participating FFI, the requirements set forth in the FFI agreement;

**(B)** For a registered deemed-compliant FFI (other than a reporting Model 1 FFI) or an FFI that agrees to be treated as a registered deemed-compliant FFI, the requirements under §1.1471-5(f)(1) or an applicable Model 2 IGA; or

**(C)** For a registered deemed-compliant Model 1 IGA FFI, reporting Model 1 FFI, or an FFI that agrees to be treated as a registered deemed-compliant Model 1 IGA FFI or reporting Model 1 FFI, the requirements under an applicable Model 1 IGA.

**Sec. 2.28. Financial Institution (FI).** “Financial institution” or “FI” is defined

in §1.1471-5(d) and includes a financial institution as defined under an applicable Model 1 or Model 2 IGA.

**Sec. 2.29. Foreign Financial Institution (FFI).** “Foreign Financial Institution” or “FFI” means a foreign entity (as defined in §1.1473-1(e)) that is a financial institution.

**Sec. 2.30. FFI Agreement.** “FFI Agreement” means an agreement described in §1.1471-4(a) and provided in Rev. Proc. 2017-16, 2017-3 I.R.B. 501 (and any superseding revenue procedure).

**Sec. 2.31. Flow-Through Entity.** A flow-through entity is a foreign partnership described in §301.7701-2 or 3 (other than a withholding foreign partnership), a foreign trust (other than a withholding foreign trust) that is described in section 651(a), or a foreign trust if all or a portion of such trust is treated as owned by the grantor or other person under sections 671 through 679. For an item of income for which a treaty benefit is claimed, an entity is also a flow-through entity to the extent it is treated as fiscally transparent under section 894 and the regulations thereunder. For an amount realized or amount subject to withholding under section 1446(a) on a PTP distribution, a flow-through entity includes a U.S. grantor trust.

**Sec. 2.32. Foreign Person.** A “foreign person” is any person that is not a “United States person” and includes a “nonresident alien individual,” a “foreign corporation,” a “foreign partnership,” a “foreign trust,” and a “foreign estate,” as those terms are defined in section 7701. For purposes of chapters 3 and 4, the term foreign person also means, with respect to a payment by a withholding agent, a foreign branch (including a foreign disregarded entity) of a U.S. person that provides a valid Form W-8IMY on which it represents that it is a QI. A foreign branch of a U.S. person that is a QI is, however, a U.S. payor for purposes of chapter 61 and section 3406.

**Sec. 2.33. Foreign TIN.** A “foreign TIN” is a taxpayer identification number issued by a foreign person’s country of residence.

**Sec. 2.34. Form W-8.** “Form W-8” means IRS Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals)*; IRS Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United*

*States Tax Withholding and Reporting (Entities)*; IRS Form W-8ECI, *Certificate of Foreign Person’s Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States*; IRS Form W-8EXP, *Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting*; and IRS Form W-8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*, as appropriate. It also includes any acceptable substitute Form W-8.

**Sec. 2.35. Form W-9.** “Form W-9” means IRS Form W-9, *Request for Taxpayer Identification Number and Certification*, or any acceptable substitute Form W-9.

**Sec. 2.36. Form 945.** “Form 945” means IRS Form 945, *Annual Return of Withheld Federal Income Tax*.

**Sec. 2.37. Form 1042.** “Form 1042” means IRS Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*.

**Sec. 2.38. Form 1042-S.** “Form 1042-S” means IRS Form 1042-S, *Foreign Person’s U.S. Source Income Subject to Withholding*.

**Sec. 2.39. Form 1099.** “Form 1099” means IRS Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*; IRS Form 1099-DIV, *Dividends and Distributions*; IRS Form 1099-INT, *Interest Income*; IRS Form 1099-MISC, *Miscellaneous Income*; IRS Form 1099-OID, *Original Issue Discount*; and any other form in the IRS Form 1099 series appropriate to the type of payment required to be reported.

**Sec. 2.40. Form 8966.** “Form 8966” means IRS Form 8966, *FATCA Report*.

**Sec. 2.41. Form 1099 Reporting.** “Form 1099 reporting” means the reporting required on Form 1099.

**Sec. 2.42. Global Intermediary Identification Number (GIIN).** “Global intermediary identification number” or “GIIN” means the identification number that is assigned to a participating FFI, registered deemed-compliant FFI, direct reporting NFFE, or sponsoring entity of a direct reporting NFFE. The term also includes the identification number assigned to a reporting Model 1 FFI or registered

deemed-compliant Model 1 IGA FFI that is a QI for the purpose of identifying itself to withholding agents.

**Sec. 2.43. Home Office.** “Home office” means a foreign person, excluding any branches of the foreign person, that applies for QDD status.

**Sec. 2.44. Intermediary.** An “intermediary” means any person that acts on behalf of another person such as a custodian, broker, nominee, or other agent.

**Sec. 2.45. Know-Your-Customer Rules.** “Know-your-customer rules” refers to the applicable laws, regulations, rules, and administrative practices and procedures governing the requirements of QI to obtain documentation confirming the identity of QI’s account holders.

**Sec. 2.46. Marketable Securities.** For purposes of this Agreement, the term “marketable securities” means those securities described in §1.1441-6 for which a U.S. TIN (or foreign TIN) is not required to obtain treaty benefits with respect to an amount subject to chapter 3 withholding.

**Sec. 2.47. Net Delta Exposure.** Net delta exposure to an underlying security is the amount (measured in number of shares) by which (A) the aggregate number of shares in an underlying security that the QDD has exposure to as a result of positions in the underlying security (including as a result of owning the underlying security) with values that move in the same direction as the underlying security (the “long positions”) exceeds (B) the aggregate number of shares of in an underlying security that the QDD has exposure to as a result of positions in the underlying security with values that move in the opposite direction from the underlying security (the “short positions”). The net delta exposure calculation only includes long positions and short positions that the QDD holds in its equity derivatives dealer business. Any long positions or short positions that are treated as effectively connected with the QDD’s conduct of a trade or business in the United States for U.S. federal income tax purposes are excluded from the net delta exposure computation. The net delta exposure to an underlying security is determined at the end of the day on the date provided in §1.871-15(j)(2) for the applicable dividend. For purposes of this calculation, net delta must be determined

in a commercially reasonable manner. If a QDD calculates net delta for non-tax business purposes, the net delta ordinary will be the delta used for this purpose, subject to the modifications required by this definition. Each QDD must determine its net delta exposure separately only taking into account transactions that exist and are attributable to that QDD for U.S. federal income tax purposes.

**Sec. 2.48. Non-Consenting U.S. Account.** For purposes of a reporting Model 2 FFI, “non-consenting U.S. account” has the meaning that such term has under an applicable Model 2 IGA.

**Sec. 2.49. Non-Exempt Recipient.** A “non-exempt recipient” means a person that is not an exempt recipient under the definition in section 2.26 of this Agreement.

**Sec. 2.50. Non-Financial Foreign Entity (NFFE).** A “non-financial foreign entity” or “NFFE” means a foreign entity that is not a financial institution (including an entity that is incorporated or organized under the laws of any U.S. territory and that is not a financial institution). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 or Model 2 IGA.

**Sec. 2.51. Nonparticipating FFI.** A “nonparticipating FFI” means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

**Sec. 2.52. Nonqualified Intermediary (NQI).** A “nonqualified intermediary” or “NQI” is any intermediary that is not a qualified intermediary. An NQI includes any intermediary that is a foreign person unless such person enters an agreement to be a QI and acts in such capacity. An NQI also includes an intermediary that is a territory FI unless such institution agrees to be treated as a U.S. person.

**Sec. 2.53. Non-U.S. Payor.** A “non-U.S. payor” means a payor other than a U.S. payor as defined in this section 2.81 of this Agreement.

**Sec. 2.54. Nonwithholding Foreign Partnership.** A “nonwithholding foreign partnership” means a foreign partnership other than a withholding foreign partnership as defined in §1.1441-5(c)(2)(i).

**Sec. 2.55. Nonwithholding Foreign Trust.** A “nonwithholding foreign trust” means a foreign trust (as defined in section 7701(a)(31)(B)) that is a foreign simple

trust or a foreign grantor trust and that is not a withholding foreign trust.

**Sec. 2.56. Overwithholding.** The term “overwithholding” means any amount actually withheld (determined before application of the adjustment procedures described in section 9 of this Agreement) from an item of income or other payment that is in excess of:

(A) The amount required to be withheld under chapter 4 with respect to such item of income or other payment, if applicable;

(B) In the case of an amount subject to chapter 3 withholding, the actual tax liability of the beneficial owner of the income or payment to which the withheld amount is attributable, regardless of whether such overwithholding was in error or appeared correct when it occurred; and,

(C) In the case of the withholding required under section 1446(a) or (f), the excess of the amount withheld over the amount required to be withheld under §1.1446-4 or §1.1446(f)-4, respectively.

For purposes of section 3406, the term “overwithholding” means the excess of the amount actually withheld under section 3406 over the amount required to be withheld.

**Sec. 2.57. Participating FFI.** A “participating FFI” means an FFI described in §1.1471-1(b)(91). The term participating FFI also includes a QI branch of a U.S. financial institution unless such branch is a reporting Model 1 FFI.

**Sec. 2.58. Payee.** For chapter 4 purposes, a “payee” means a person described in §1.1471-3(a). For purposes of chapter 61, a “payee” means the person to whom a payment is made. For purposes of chapter 3, a “payee” means a person described in §1.1441-1(c)(12).

**Sec. 2.59. Payment.** A “payment” is considered made to a person if that person realizes income, whether or not such income results from an actual transfer of cash or other property. See §1.1441-2(e). For example, a payment includes crediting an amount to an account. For any payment of a dividend equivalent, a “payment” has the meaning provided in §1.871-15(i).

**Sec. 2.60. Payor.** A “payor” is defined in §31.3406(a)-2 and §1.6049-4(a)(2) and generally means any person required to make an information return under chapter 61. The term includes any person that makes a payment, directly or indirectly, to

QI and to whom QI provides information, pursuant to this Agreement, so that such person can report a payment on Form 1099 and, if appropriate, backup withhold. See also sections 2.81 and 2.53 of this Agreement for the definition of U.S. payor and non-U.S. payor.

**Sec. 2.61. Potential Section 871(m) Transaction.** A “potential section 871(m) transaction” is any securities lending or sale-repurchase transaction, notional principal contract (NPC), or equity linked instrument (ELI) that references one or more underlying securities. For purposes of this definition, securities lending or sale-repurchase transaction, NPC, ELI, reference, and underlying security have the meaning given to the terms in §§1.871-15(a)(13), (7), (4), (11), and (15), respectively.

**Sec. 2.62. Private Arrangement Intermediary (PAI).** A “private arrangement intermediary” or “PAI” is an intermediary described in section 4 of this Agreement.

**Sec. 2.63. Qualified Derivatives Dealer (QDD).** A “qualified derivatives dealer” or “QDD” is an eligible entity that agrees to meet the requirements of §1.1441-1(e)(6)(i) and of this Agreement with respect to payments on potential section 871(m) transactions and underlying securities that it receives or makes as a principal. In order to act as a QDD, the home office or branch, as applicable, must qualify and be approved for QDD status and must represent itself as a QDD on its Form W-8IMY and separately identify the home office or branch as the recipient on a withholding statement (if necessary). Each home office or branch that obtains QDD status is treated as a separate QDD and must use the name specified on its application for QDD status when representing its status as a QDD. For the QDD’s application, a home office must use the name of the legal entity applying for QDD status, and a branch of the legal entity must add the following to the Home Office Name: QDD-BRANCH-(Branch QDD COUNTRY, and branch identifier, if necessary), for example: ABC Bank-QDD-BRANCH-SINGAPORE (Disregarded Entity Name)). Each QDD of a QI must have a different name.

**Sec. 2.64. QDD Tax Liability.** A “QDD tax liability” is the amount described in section 3.09 of this Agreement.

**Sec. 2.65. Qualified Intermediary (QI).** A “qualified intermediary” or “QI” is a person (or branch) described in §1.1441-1(e)(5)(ii) that has in effect an agreement with the IRS to be treated as a QI and acts as a QI.

**Sec. 2.66. QI-EIN.** A “QI-EIN” means the employer identification number assigned by the IRS to a QI. QI’s QI-EIN is only to be used when QI is acting as a QI. For example, QI must give a withholding agent its EIN (other than its QI-EIN), if any, if it is receiving income as a beneficial owner (excluding when it receives income as a principal when acting as either a QDD or QSL, or when a QI assumes primary withholding responsibility for a substitute interest payment under this Agreement). QI must also use its non-QI EIN, if any, when acting as an NQI. Each signatory to this Agreement must have its own QI-EIN.

**Sec. 2.67. Qualified Securities Lender (QSL).** A “qualified securities lender” or “QSL” is a person described as a qualified securities lender in Notice 2010-46, 2010-24 I.R.B. 757. A QI that acts as a QSL with respect to a substitute dividend payment (as defined in §1.861-3(a)(6)) is required to act as a QSL for all U.S. source substitute dividends received by the QI when acting as an intermediary or dealer with respect to securities lending and similar transactions, except as otherwise provided in section 1.01 of this Agreement. A QI is only permitted to act as a QSL until December 31, 2024.

**Sec. 2.68. Reportable Amount.** A “reportable amount” means U.S. source FDAP income that is an amount subject to chapter 3 withholding, U.S. source deposit interest, and U.S. source interest or original issue discount paid on the redemption of short-term obligations. The term does not include payments on deposits with banks and other financial institutions that remain on deposit for two weeks or less. It also does not include amounts of original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or amounts described in §1.6049-5(b)(7), (10), or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

**Sec. 2.69. Reportable Payment.** For purposes of this Agreement, a “reportable

payment” means an amount described in section 2.69(A) of this Agreement, in the case of a U.S. payor, and an amount described in section 2.69(B) of this Agreement, in the case of a non-U.S. payor.

**(A) U.S. Payor.** If QI is a U.S. payor, a “reportable payment” means, unless an exception to reporting applies under chapter 61,

- (1) Any reportable amount;
- (2) Any broker proceeds from a sale reportable under §1.6045-1(c); and
- (3) Any foreign source interest, dividends, rents, royalties, or other fixed and determinable income.

**(B) Non-U.S. Payor.** If QI is a non-U.S. payor, a “reportable payment” means, unless an exception to reporting applies under chapter 61,

- (1) Any reportable amount;
- (2) Any broker proceeds from a sale effected at an office inside the United States, as defined in §1.6045-1(g)(3)(iii); and
- (3) Any foreign source interest, dividends, rents, royalties, or other fixed and determinable income if such income is not paid outside the United States as described under section 5.13(C)(1) of this Agreement.

**Sec. 2.70. Reporting Model 1 FFI.** A “reporting Model 1 FFI” means an FFI with respect to which a foreign government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than an FFI that is treated as a nonreporting Model 1 FFI (including a registered deemed-compliant Model 1 IGA FFI) or a nonparticipating FFI under an applicable Model 1 IGA.

**Sec. 2.71. Reporting Pool.** A “reporting pool” is defined in section 8 of this Agreement.

**Sec. 2.72. Responsible Officer.** A “responsible officer” of a QI means an officer of the QI with sufficient authority to fulfill the duties of a responsible officer as described in section 10 of this Agreement, including the requirements to periodically certify and to respond to requests by the IRS for additional information to review the QI’s compliance.

**Sec. 2.73. Section 871(m) Amount.** For each dividend on each underlying security, the “section 871(m) amount” is (A) the QDD’s net delta exposure to the underlying security for the applicable

dividend multiplied by (B) the applicable dividend amount per share. These amounts are treated as dividend equivalent amounts under section 871(m).

**Sec. 2.74. Section 871(m) Transaction.** A “section 871(m) transaction” is any securities lending or sale-repurchase transaction, specified NPC, or specified ELI described in §1.871-15(a)(13), (d), and (e), respectively.

**Sec. 2.75. Short-Term Obligation.** A “short-term obligation” is any obligation described in section 871(g)(1)(B)(i).

**Sec. 2.76. Substitute Interest.** “Substitute interest” means a substitute interest payment described in §1.861-2(a)(7).

**Sec. 2.77. Underlying Security.** For purposes of a QI acting as a QDD or any determination relating to section 871(m), “underlying security” has the meaning provided in §1.871-15(a)(15).

**Sec. 2.78. Underwithholding.** “Underwithholding” means the excess of the amount required to be withheld under chapter 3 or 4 or section 3406 over the amount actually withheld.

**Sec. 2.79. Undocumented Account Holder.** An “undocumented account holder” is an account holder for whom QI does not hold valid documentation.

**Sec. 2.80. U.S. Account.** A “U.S. account” is any financial account maintained by an FFI that is held by one or more specified U.S. persons or U.S.-owned foreign entities that such FFI reports or elects to report under the FFI Agreement or §1.1471-5(f), as applicable.

**Sec. 2.81. U.S. Payor.** The term “U.S. payor” has the same meaning as in §1.6049-5(c)(5).

**Sec. 2.82. U.S. Person.** A “U.S. person” (or “United States person”) is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State of the United States (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof). An individual will not be treated as a U.S. person for purposes of this section for a taxable year or any portion of a taxable year that the individual is a dual resident taxpayer (within the meaning of §301.7701(b)-7(a)(1)) who is treated as a nonresident alien pursuant to §301.7701(b)-7 for purposes of computing his or her U.S. tax liability. The

term “U.S. person” or “United States person” also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in §1.1471-5(e)(1)(iv)), or the foreign insurance company is a specified insurance company and is licensed to do business in any State of the United States.

**Sec. 2.83. U.S. Reportable Account.** A “U.S. reportable account” means a financial account maintained by a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI that such FFI reports or elects to report under the applicable domestic law for compliance with and implementation of FATCA.

**Sec. 2.84. U.S. Source FDAP.** “U.S. source FDAP” means amounts from sources within the United States that constitute fixed or determinable annual or periodical income, as defined in §1.1441-2(b)(1).

**Sec. 2.85. U.S. TIN.** A “U.S. TIN” means a U.S. taxpayer identification number assigned under section 6109.

**Sec. 2.86. Withholding Agent.** A “withholding agent” has the same meaning as set forth in §1.1441-7(a) for purposes of chapter 3 and as set forth in §1.1473-1(d) for purposes of chapter 4 and includes a payor (as defined in section 2.60 of this Agreement), a broker (as defined in section 2.91(D) of this Agreement), or a nominee (as defined in section 2.91(G) of this Agreement with respect to §1.1446-4).

**Sec. 2.87. Withholding Foreign Partnership (WP).** A “withholding foreign partnership” or “WP” means a partnership, described in §1.1441-5(c)(2), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign partnership.

**Sec. 2.88. Withholding Foreign Trust (WT).** A “withholding foreign trust” or “WT” means a trust, described in §1.1441-5(e)(5)(v), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign trust.

**Sec. 2.89. Withholdable Payment.** A “withholdable payment” means an amount described in §1.1473-1(a).

**Sec. 2.90. Withholding Rate Pool.** A “withholding rate pool” is defined in section 6.03 of this Agreement and includes

a chapter 3 withholding rate pool and a chapter 4 withholding rate pool.

**Sec. 2.91. Terms Applicable to Section 1446(a) and (f) Requirements.** The following terms apply in connection with QI’s requirements with respect to QI’s account holders holding PTP interests for purposes of section 1446(a) and (f):

**(A) Amount Realized.** For purposes of section 1446(f), an “amount realized” on a sale of a PTP interest is the amount of gross proceeds (as defined in §1.6045-1(d)(5)) paid or credited to the partner or broker that is the transferor of the interest. The “amount realized” on a PTP distribution is the amount of the distribution reduced by the portion of the distribution that is attributable to the cumulative net income of the partnership (as determined under §1.1446(f)-4(c)(2)(iii)).

**(B) Amount Subject to Reporting under Section 1446(f).** An “amount subject to reporting under section 1446(f)” is the amount realized on the transfer of a PTP interest paid to a foreign partner (including a partner presumed to be foreign) unless an exception to withholding applies under §1.1446(f)-4(b)(2) through (4). See §1.1461-1(c)(2)(i)(Q).

**(C) Amount Subject to Withholding on a PTP Distribution.** An “amount subject to withholding on a PTP distribution” is the amount of the distribution subject to withholding under chapter 3 or 4 and/or under section 1446(a) or (f).

**(D) Broker.** The term “broker” has the meaning described in §1.1446(f)-1(b)(1), when referenced in connection with the transfer of a PTP interest.

**(E) Disclosing QI.** For purposes of section 1446(a) or (f), a “disclosing QI” is a QI that does not assume the primary withholding obligation under section 1446(a) or (f) for a payment and that provides with its withholding statement the specific payee documentation referenced in §1.1446(f)-4(a)(7)(iii) (for an amount realized) or §1.1446-4(e)(4) (for withholding on a PTP distribution under section 1446(a)) instead of the chapter 3 withholding rate pool information otherwise permitted to be included on the withholding statement and, for an amount realized, a chapter 4 withholding rate pool of U.S. payees when permitted for chapter 4 purposes in lieu of specific payee documentation (that is, Forms W-9) for those

payees. A QI that acts as a disclosing QI for a payment must act as a disclosing QI for the entire payment of an amount realized from the sale of a PTP interest or a PTP distribution (regardless of the number of account holders that are partners receiving the payment). For purposes of the preceding sentence, a QI will be treated as having acted as a disclosing QI with respect to an account holder that is a foreign person regardless of whether the Form W-8 that QI provides with its withholding statement for the foreign person includes a U.S. TIN. See, however, section 5.01(A) of this Agreement for a QI’s requirement to request U.S. TINs from its account holders for purposes of sections 1446(a) and (f).

**(F) Modified Amount Realized.** In the case of an amount realized paid to a transferor of a PTP interest that is a foreign partnership, the “modified amount realized” is the amount determined under §1.1446(f)-4(c)(2)(ii), as modified by section 4.06 or 5 of this Agreement with respect to the partner information required for determining the amount.

**(G) Nominee.** Except as otherwise provided in this Agreement, the term “nominee” means a person that, under §1.1446-4(b)(3), holds an interest in a PTP on behalf of a foreign person and that is either a U.S. person or QI that assumes primary withholding responsibility for a PTP distribution or a U.S. branch of a foreign person (or territory financial institution) that agrees to be treated as a U.S. person with respect to the distribution.

**(H) Partner.** When referenced in connection with section 1446(a) and (f), a “partner” is a person holding a PTP interest, including a partnership or trust but excluding a grantor trust and including the trust’s grantors or owners to the extent of their respective interests in the trust, and excluding an intermediary. When referenced in connection with §1.6031(c)-1T, a partner is a person to whom a partnership is required to issue a statement under section 6031(b). See section 8.07 of this Agreement.

**(I) PTP Interest.** A “PTP interest” is an interest in a publicly traded partnership if the interest is publicly traded on an established securities market or is readily tradable on a secondary market (or the substantial equivalent thereof).

**(J) PTP Distribution.** A “PTP distribution” is a distribution made by a publicly traded partnership.

**(K) Publicly Traded Partnership (PTP).** The term “publicly traded partnership” (PTP) has the same meaning as in section 7704 and §§1.7704-1 through 1.7704-4 but does not include a publicly traded partnership treated as a corporation under that section.

**(L) Qualified Notice.** A “qualified notice” is a notice issued by a PTP for a PTP distribution as described in §1.1446-4(b)(4).

**(M) Transfer.** A “transfer” is a sale, exchange, or other disposition of a PTP interest and includes a distribution from a partnership to a partner, as well as a transfer treated as a sale or exchange under section 707(a)(2)(B). With respect to a PTP distribution, however, see sections 2.91(A) and 3.01(C)(2) of this Agreement for the extent of an amount realized on the distribution for purposes of QI’s requirement to withhold under section 1446(f).

**(N) Transferor.** A “transferor” is any person, foreign or domestic, that transfers a PTP interest. In the case of a trust, to the extent all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679, the term transferor means the grantor or other person.

**Sec. 2.92. Other Terms.** Any term not defined in this section has the same meaning that it has under the Code, including the income tax regulations under the Code, any applicable income tax treaty, or any applicable Model 1 or Model 2 IGA with respect to a QI’s FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. Except as expressly provided in this Agreement, any term relating to a QDD or section 871(m) has the same meaning given to the term in §1.871-15.

### SECTION 3. WITHHOLDING RESPONSIBILITY AND QDD TAX LIABILITY

**Sec. 3.01. Chapters 3 and 4 Withholding Responsibilities and Withholding with respect to PTP Interests.**

**(A) Chapter 4 Withholding.** QI is a withholding agent for purposes of

chapter 4 and subject to the withholding and reporting provisions applicable to withholding agents under sections 1471 and 1472 with respect to its accounts. QI is required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an FFI unless either QI can reliably associate the payment (or portion of the payment) with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under §1.1471-2(a)(4) or the payment is made under a grandfathered obligation described in §1.1471-2(b). See §1.1471-2(b)(2)(i)(A)(2) for the definition of grandfathered obligation with respect to an obligation giving rise to a dividend equivalent. QI is also required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an NFFE unless either QI can reliably associate the payment (or portion of the payment) with a certification described in §1.1472-1(b)(1)(ii) or an exception to withholding under §1.1472-1 otherwise applies.

If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), QI will satisfy its requirement to withhold under sections 1471(a) and 1472(a) with respect to direct account holders that are entities by withholding on withholdable payments made to nonparticipating FFIs and recalcitrant account holders to the extent required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI. See the FFI Agreement, §1.1471-5(f)(1), or the applicable Model 2 IGA for the withholding requirements that apply to withholdable payments made to account holders of the FFI that are individuals treated as recalcitrant account holders or non-consenting U.S. accounts. If QI is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, QI will satisfy its requirement to withhold under section 1471(a) with respect to direct account holders by withholding on withholdable payments made to nonparticipating FFIs to the extent required under its FATCA requirements as a registered deemed-compliant FFI or registered deemed-compliant Model 1 IGA FFI. QI must, however, withhold in the manner described in sections 3.02 and 3.03 of this Agreement for when QI assumes or does

not assume primary withholding responsibility for purposes of chapters 3 and 4 regardless of its chapter 4 status.

**(B) Chapter 3 Withholding.** To the extent that QI makes a payment of an amount subject to chapter 3 withholding, QI is required to withhold 30 percent of the gross amount of any such payment made to an account holder that is (or is presumed) a foreign person unless QI can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. See section 5 of this Agreement regarding documentation requirements. With respect to an amount subject to chapter 4 withholding that is also an amount subject to chapter 3 withholding, QI may credit any tax withheld under chapter 4 against its liability for any tax due under chapter 3 with respect to the payment so that no additional withholding is required on the payment for purposes of chapter 3. Nothing in chapter 4 or the regulations thereunder (including the FFI Agreement) or any applicable IGA relieves QI of its requirements to withhold under chapter 3 to the extent required in this Agreement.

**(C) Withholding on Amounts Realized and PTP Distributions.**

**(1) Withholding on an Amount Realized.** If QI acts as a broker with respect to a payment of an amount realized from a transfer of a PTP interest, QI is required to withhold under section 1446(f) 10-percent of the amount realized paid to an account holder of QI that is the transferor and is (or is presumed to be) a foreign partner when QI assumes primary withholding responsibility for the payment under section 3.03(C)(1) of this Agreement. QI is further required to withhold on a payment of an amount realized made to a foreign broker to the extent provided in §1.1446(f)-4(a)(2). QI is not required to withhold on a payment of an amount realized when an exception to withholding under §1.1446(f)-4(b) applies. Thus, for example, QI is not required to withhold under section 1446(f) when it may rely on a qualified notice that states the applicability of the exception under §1.1446(f)-4(b)(3). See section 5 of this Agreement regarding documentation requirements

for other exceptions to withhold under §1.1446(f)-4(b).

**(2) Withholding on a PTP Distribution.** If QI acts as a nominee for a PTP distribution under section 3.03(C)(2) of this Agreement, QI is a withholding agent for purposes of the distribution and is required to withhold as described in this section 3.01(C)(2). For an amount subject to withholding under section 1446(a) identified on a qualified notice for a PTP distribution, QI is required to withhold on the amount paid to an account holder that is (or is presumed to be) a foreign partner except when an exception to withholding applies to an account holder that is a foreign entity described in section 501(c)(3) or that claims an exemption from withholding under an income tax treaty. See sections 5.03 and 5.06(A) of this Agreement for documentation requirements for these exceptions and section 1446(b) for the rate of withholding that applies under section 1446(a). See also §1.1446-5(c) and (d) for how QI determines its withholding under section 1446(a) on a PTP distribution paid to an account holder that is a foreign partnership. For an amount subject to withholding under chapter 3 and 4 on a PTP distribution, QI is required to withhold under sections 3.01(A) and (B) of this Agreement to the extent such amounts are identified on a qualified notice for the distribution. For an amount realized on a PTP distribution, QI's requirement to withhold under section 1446(f) is limited to the amount identified on a qualified notice as in excess of the PTP's cumulative net income, subject to the withholding exceptions referenced in section 3.01(C)(1) of this Agreement. If QI does not receive a qualified notice for a distribution or to the extent the qualified notice for the distribution does not specify an amount attributable to the distribution, QI is required to withhold only to the extent provided in §1.1446-4(d)(1).

**Sec. 3.02. Primary Withholding Responsibility Not Assumed under Chapters 3 and 4 or with respect to PTP interests.** Notwithstanding anything in sections 1.01 and 3.01 of this Agreement to the contrary, QI is not required to withhold to the extent provided in this section 3.02.

**(A) Withholding under Chapters 3 and 4.** QI is not required to withhold

with respect to a payment of U.S. source FDAP income if it: (a) does not assume primary withholding responsibility under section 3.03(A) of this Agreement by electing to be withheld upon under §1.1471-2(a)(2)(iii) for purposes of chapter 4, (b) provides the withholding agent from which QI receives the payment with a valid withholding certificate described in section 6 of this Agreement that indicates that QI does not assume primary withholding responsibility for chapters 3 and 4 purposes, and (c) provides correct withholding statements (including information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI, other than a QI that assumes primary withholding responsibility, or a WP or WT) as described in section 6.02 of this Agreement.

**(B) Withholding with respect to PTP interest.** QI is not required to withhold on a payment of a PTP distribution or an amount realized from the sale of a PTP interest except when QI assumes primary withholding responsibility for either of those payments under section 3.03(C)(1) or (2) of this Agreement. QI does not assume primary withholding responsibility for a payment of a PTP distribution or amount realized from the sale of a PTP interest by providing to its withholding agent or broker a valid withholding certificate described in section 6 of this Agreement indicating that it is a QI that does not assume primary withholding responsibility for the payment and provides correct withholding statements as described in section 6.02 of this Agreement. See section 3.05(C) of this Agreement for when QI is not responsible for primary Form 1099 reporting and backup withholding for broker proceeds that are an amount realized.

**(C) Residual Withholding Requirement.** Notwithstanding its election not to assume primary withholding responsibility for a payment as described in section 3.02(A) or (B) of this Agreement, QI shall, however, withhold the difference between the amount of withholding required and the amount actually withheld by another withholding agent if QI—

**(1)** Actually knows that the appropriate amount has not been withheld by another withholding agent; or

**(2)** Made an error which results in the withholding agent's failure to withhold the correct amount due (e.g., QI fails to provide an accurate withholding statement with respect to the payment, including a failure to provide information regarding any account holders or any interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement), and QI has not corrected the under-withholding under section 9.05 of this Agreement.

**Sec. 3.03. Assumption of Primary Withholding Responsibilities under Chapters 3 and 4 (including by QDDs) or with respect to PTP interests.**

**(A) Withholding Assumed under Chapters 3 and 4.** QI may assume primary withholding responsibility for purposes of chapters 3 and 4 by providing a valid withholding certificate described in section 6 of this Agreement to a withholding agent that makes a payment of U.S. source FDAP income to QI and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary withholding responsibility (if required). QI is not required to assume primary withholding responsibility for all accounts it holds with a withholding agent. If QI assumes primary withholding responsibility for any account, it must assume that responsibility under chapters 3 and 4 for all withholdable payments and amounts subject to chapter 3 withholding made by the withholding agent to that account. Notwithstanding the preceding sentence, QI assumes primary withholding responsibility on a PTP distribution (which includes an amount subject to withholding under chapter 3 or 4 on the distribution) only as provided in section 3.03(C)(2) of this Agreement.

If QI is acting as a QSL for a substitute dividend payment, QI must assume primary withholding responsibility for any such payment made to any account holder receiving a U.S. source substitute dividend payment, subject to the restrictions related to QDDs described in section 1.01 of this Agreement. A QI not acting as a QSL and acting as an intermediary under this Agreement for a U.S. source substitute dividend payment must also assume primary withholding responsibility for all

U.S. source substitute dividends received and paid by QI as an intermediary.

QI may assume primary withholding responsibility for U.S. source FDAP payments of substitute interest as described in §1.861-2(a)(7). If QI assumes primary withholding responsibility for payments of substitute interest (as described in this paragraph), it must assume primary withholding responsibility with respect to all such payments. QI assumes primary withholding responsibility for payments of substitute interest for purposes of this Agreement when it assumes such responsibility for payments of interest and substitute interest it receives in connection with a sale-repurchase or similar agreement, a securities lending transaction, or collateral that it holds in connection with its activities as a dealer in securities. As a result, QI may represent its status as a QI on the withholding certificate described in section 6.01 of this Agreement with respect to payments it receives of interest and substitute interest described in the preceding sentence regardless of whether it acts as an intermediary or as a principal with respect to these payments.

To the extent that QI assumes primary withholding responsibility under this section 3.03(A), QI must withhold as described in section 3.01(A) and (B) of this Agreement. QI is not required to withhold on amounts it pays to another QI that has assumed primary withholding responsibility with respect to the payment under chapters 3 and 4 or to a WP or a WT. A QI is not required to withhold on only the following payments to a QI acting as a QDD—

(1) a payment with respect to a potential section 871(m) transaction that is not an underlying security,

(2) a payment of a dividend equivalent, and

(3) a payment of a dividend received in calendar year 2023 or 2024 by that QDD in its equity derivatives dealer capacity.

**(B) Assumption of Withholding Responsibility by a QDD.** If QI is acting as a QDD, it must assume primary chapters 3 and 4 withholding responsibility for any dividend equivalent payment that it

makes and must withhold with respect to a dividend equivalent payment on the dividend payment date for the applicable dividend (as determined in §1.1441-2(e)(4)). A QDD must treat any dividend equivalent (including any section 871(m) amount) as a dividend from sources within the United States for purposes of sections 871(a) and 881 and chapter 3 and chapter 4 consistent with section 871(m) and the regulations thereunder. A QDD may reduce the rate of withholding under chapter 3 on dividends and dividend equivalents only based on a beneficial owner's claim of treaty-reduced withholding for portfolio dividends under the dividends article of an applicable income tax treaty. A QDD must also assume primary chapter 3 and chapter 4 withholding responsibility for payments made with respect to a potential section 871(m) transaction even if the payment is not a dividend equivalent if the amount paid is an amount subject to chapter 3 or 4 withholding. See section 3.03(A) of this Agreement for when a QDD makes a payment subject to withholding under chapter 3 or 4 to another QI (including a QDD). If the QDD is a partnership or a branch of a partnership, it must also assume primary chapters 3 and 4 withholding responsibility for its partners on the section 3.09 amounts as modified for a QDD that is a partnership (or branch of a partnership), treating the dividend equivalent payment as made on the dividend payment date for the applicable dividend (as determined in §1.1441-2(e)(4)). In addition, the QDD must notify each payee in writing that it will withhold on the dividend payment date before the time for determining the payee's first dividend equivalent payment (as determined under §1.871-15(j)(2)).

**(C) Withholding Assumed with respect to PTP Interests.**

**(1) Withholding Assumed on Amount Realized.** QI may assume primary withholding responsibility for a payment of an amount realized from the sale of a PTP interest only when the QI provides to the broker making the payment to QI a valid withholding certificate described in section 6 of this Agreement stating that it assumes primary responsibility for the

payment. In such a case, QI is required to withhold on the payment as described in section 3.01(C)(1) of this Agreement, excluding an amount realized paid to another QI that has assumed primary withholding responsibility with respect to the amount realized.

**(2) Withholding Assumed on PTP Distribution.** QI may assume primary withholding responsibility for a payment of a PTP distribution only when the QI provides to the PTP or nominee paying the distribution to QI a valid withholding certificate described in section 6 of this Agreement stating that QI assumes primary responsibility by acting as a nominee for the distribution under §1.1446-4(b)(3). QI may act as a nominee for a PTP distribution only when QI assumes primary withholding responsibility for all of the amounts subject to withholding on the PTP distribution under sections 1446(a) and (f) and chapters 3 and 4. When acting as a nominee, QI is required to withhold on a PTP distribution as required under section 3.01(C)(2) of this Agreement, excluding a PTP distribution paid to another QI that has assumed primary withholding responsibility as a nominee with respect to the distribution or paid to a WP or WT with respect to an amount subject to withholding under chapter 3 or 4 on the distribution.

**Sec. 3.04. Backup Withholding Under Section 3406 and Form 1099 Reporting Responsibility.**

**(A) Backup Withholding.** QI is a payor under section 3406 with respect to reportable payments. Under section 3406, unless an exception to backup withholding applies, a payor is required to deduct and withhold 24<sup>1</sup> percent from a reportable payment to an account holder that is a U.S. non-exempt recipient if the U.S. non-exempt recipient has not provided its U.S. TIN in the manner required under that section; the IRS notifies the payor that the U.S. TIN furnished by the payee is incorrect; there has been a notified payee under-reporting described in section 3406(c); or there has been a payee certification failure described in section 3406(d).

<sup>1</sup> See section 3406(a), providing that the applicable rate of backup withholding is the fourth lowest rate of tax applicable under section 1(c).



**(B) Coordination of Chapter 4 Withholding and Backup Withholding.** With respect to a withholdable payment that is also a reportable payment subject to backup withholding under section 3406, QI is not required to withhold under section 3406 if QI withheld on such payment under chapter 4. See §31.3406(g)-1(e). Alternatively, if QI is a participating FFI or a registered deemed-compliant FFI (other than a reporting Model 1 FFI), it may elect to satisfy its obligation to withhold under chapter 4 (or the FFI Agreement) on a withholdable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient by satisfying its backup withholding obligation under section 3406 provided that the payment is also a reportable payment. See section 4 of the FFI Agreement. Nothing in chapter 4 (including the FFI Agreement) or any applicable IGA relieves QI of its requirements to backup withhold under section 3406 to the extent required by this Agreement.

**(C) Form 1099 Reporting.** If QI applies backup withholding (as described in section 3.04(B) of this Agreement), it must report the amount subject to backup withholding on Form 1099 and not on Form 1042-S.

**Sec. 3.05. Primary Form 1099 Reporting and Backup Withholding Responsibility for Reportable Payments Other Than Reportable Amounts.** QI is responsible for Form 1099 reporting and backup withholding on reportable payments other than reportable amounts to the extent required under this section 3.05 and section 8.06 of this Agreement, whether or not QI assumes primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts under section 3.07 of this Agreement. Further, no provision of this Agreement which requires QI to provide another withholding agent with information regarding reportable amounts shall be construed as relieving QI of its Form 1099 reporting and backup withholding obligations with respect to reportable payments that are not reportable amounts. For when withholding under section 1446(a) or (f) is applied on a payment to an account holder that is a U.S. person, however, see section 8.02 of this Agreement. Also see, §31.3406(g)-1(e), providing that a payor

(irrespective of whether the payor is a U.S. or non-U.S. payor) is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States with respect to an offshore obligation or on gross proceeds from a sale effected outside the United States, unless the payor has actual knowledge that the payee is a U.S. person.

**(A) U.S. Payor.** Except as provided in section 3.05(C) of this Agreement, if QI is a U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for reportable payments other than reportable amounts. For example, if QI is a U.S. payor, it has primary Form 1099 reporting and backup withholding responsibility for payments of foreign source income as well as all broker proceeds paid to account holders that are, or are presumed to be, U.S. non-exempt recipients.

**(B) Non-U.S. Payor.** If QI is a non-U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for broker proceeds described in section 2.69(B)(2) of this Agreement and foreign source fixed and determinable income other than income paid and received outside United States as described in section 2.69(B)(3) of this Agreement if such payments are made (or presumed made) to U.S. non-exempt recipients.

**(C) Special Procedure for Broker Proceeds.** If QI is a U.S. payor, QI may request another payor that is either a U.S. financial institution or another QI to report on Form 1099 and, if required, backup withhold with respect to broker proceeds from a sale that is effected at an office outside the United States (as defined in §1.6045-1(g)(3)(iii)) that QI is otherwise required to report under section 3.05(A) and section 8.05 of this Agreement, provided the other payor actually receives the broker proceeds. In such a case, QI will not be responsible for primary Form 1099 reporting and backup withholding with respect to broker proceeds, provided that the other payor agrees to do the reporting and backup withholding and QI provides all of the information necessary for the other payor to properly report and backup withhold. QI, however, remains responsible for primary Form 1099 reporting and backup withholding if the other payor does not agree to report and backup withhold,

or if QI knows that the other payor failed to do so. If, however, QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI) that reports an account on Form 1099 in order to satisfy its U.S. account reporting requirement under chapter 4, as described in section 8.04 of this Agreement, QI is responsible for reporting on Form 1099 with respect to reportable payments made to such U.S. account and must report in the manner described in the FFI Agreement.

Notwithstanding the preceding provisions of this section 3.05, for a payment of broker proceeds that is an amount realized from the sale of a PTP interest, QI will not be excepted from responsibility for primary Form 1099 reporting and backup withholding if QI provides a valid withholding certificate described in section 6 of this Agreement to the broker paying the proceeds to QI that indicates that QI assumes primary withholding responsibility for the amount realized.

**Sec. 3.06. Primary Form 1099 Reporting and Backup Withholding Responsibility for Reportable Amounts Not Assumed.** Notwithstanding sections 1.01 and 3.04 of this Agreement, QI shall not be required to report on Form 1099 and backup withhold with respect to a reportable amount if QI does not assume primary Form 1099 reporting and backup withholding responsibility and it provides a payor from which it receives a reportable amount the Forms W-9 of its U.S. non-exempt recipient account holders (or, if a U.S. non-exempt recipient fails to provide a Form W-9 or information regarding the account holder's name, address, and U.S. TIN, if a U.S. TIN is available) together with the withholding rate pools attributable to U.S. non-exempt recipient account holders so that such payor may report on Form 1099 and, if required, backup withhold. If QI elects to backup withhold on withholdable payments that are also reportable amounts made to recalcitrant account holders that are also U.S. non-exempt recipients, QI shall not be required to report on Form 1099 and backup withhold with respect to a reportable amount if it provides a payor from which it receives a reportable amount information regarding such recalcitrant account holders. See section 6.03 of this Agreement and section 4 of the FFI Agreement. If QI reports

its U.S. accounts on Forms 1099 under its FATCA requirements as a participating FFI or registered deemed-compliant FFI, see section 8.04(A) of this Agreement providing that QI cannot delegate to a withholding agent its requirement to report its U.S. accounts. If QI elects not to assume primary Form 1099 reporting and backup withholding responsibility, QI must provide the withholding agent with such information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI. Notwithstanding its election not to assume primary Form 1099 reporting and backup withholding responsibility, QI shall backup withhold and report a reportable amount to the extent required under sections 3.04 and 8.06 of this Agreement if—

(A) QI actually knows that a reportable amount is subject to backup withholding and that another payor failed to apply backup withholding, or

(B) Another payor has not applied backup withholding to a reportable amount because of an error made by QI (e.g., QI failed to provide the other payor with information regarding the name, address, U.S. TIN (if available), and withholding rate pool for a U.S. non-exempt recipient account holder subject to backup withholding, including a failure to provide information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement).

**Sec. 3.07. Primary Form 1099 Reporting and Backup Withholding Responsibility Assumed.** QI may assume primary Form 1099 reporting backup withholding responsibility with respect to reportable amounts without obtaining approval from the IRS. QI that assumes such responsibility is subject to all of the obligations imposed by chapter 61 and section 3406, as modified by this Agreement, and QI shall be subject to any applicable penalties for failure to meet those obligations. QI shall inform a payor from which it receives a reportable amount that it has assumed primary Form 1099 reporting and backup withholding responsibility by providing the payor with a valid withholding certificate described in section 6 of this Agreement and by identifying on

the withholding statement associated with such certificate the account(s) for which QI assumes primary Form 1099 reporting and backup withholding responsibility (if required).

QI is not required to assume primary Form 1099 reporting and backup withholding responsibility for all accounts it holds with a payor. However, if QI assumes primary Form 1099 reporting and backup withholding responsibility for any account, it must assume that responsibility for all reportable amounts made by a payor to that account.

If QI is acting as a QDD, it must assume primary Form 1099 reporting and backup withholding responsibility for any reportable payments that are made with respect to a potential section 871(m) transaction. Thus, for example, if QI acts as a QDD with respect to an NPC that is a potential section 871(m) transaction and makes a payment pursuant to the NPC to a U.S. person that is a U.S. non-exempt recipient, QI must backup withhold and report any amount paid to the U.S. person to the extent required under section 3406 and §1.6041-1(d)(5).

In addition, if QI is assuming primary withholding responsibility for payments of substitute interest (as described in section 3.03(A) of this Agreement), it must assume primary Form 1099 reporting and backup withholding responsibility with respect to all such payments (with a similar requirement for Form 1099 reporting if QI assumes primary withholding responsibility for any payments of substitute dividends or acts as a QSL under section 3.02(A) of this Agreement).

QI is not required to backup withhold on a reportable amount it makes to a WP, WT, or another QI that has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the reportable amount. QI is also not required to backup withhold on a reportable amount that QI makes to an intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or another QI that does not assume primary Form 1099 reporting and backup withholding responsibility with respect to the payment provided that such intermediary or flow-through entity allocates the payment on its withholding statement to a chapter 4 withholding rate

pool of U.S. payees and the withholding statement is associated with a valid Form W-8IMY that provides the applicable certification(s) for allocating the payment to this pool or allocates the payment on its withholding statement to a chapter 4 withholding rate pool of recalcitrant account holders.

**Sec. 3.08. Deposit Requirements.** If QI assumes primary withholding responsibility for a payment under section 3.03 of this Agreement, it must deposit amounts withheld at the time and in the manner provided under section 6302 (see §1.6302-2) by electronic funds transfer as provided under §31.6302-1(h). If QI is a non-U.S. payor that does not assume primary withholding responsibility under section 3.03 of this Agreement but withholds under section 3.02(C) of this Agreement, QI must deposit amounts withheld by the 15th day following the month in which the withholding occurred.

**Sec. 3.09. QDD Tax Liability.** In addition to satisfying its withholding tax liability as described in this Agreement, a QDD must satisfy its QDD tax liability. The QDD's QDD tax liability is the sum of:

(A) its tax liability under section 881 for its section 871(m) amount (as defined in section 2.73 of this Agreement) for each dividend on each underlying security reduced (but not below zero) by the amount of tax paid by the QDD under section 881(a)(1) on dividends received with respect to that underlying security on that same dividend in its capacity as an equity derivatives dealer;

(B) its tax liability under section 881 for dividend equivalent payments received as a QDD in its non-equity derivatives dealer capacity; and

(C) its tax liability under section 881 for any payments, such as dividends or interest, received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend equivalent payments, to the extent the full liability was not satisfied by withholding.

A QDD that is a foreign branch of a U.S. financial institution does not have a QDD tax liability. Instead, such a QDD must determine and report its tax liability in accordance with chapter 1 and the appropriate U.S. tax return for the U.S. corporation.

In the case of a QDD that is a partnership or a branch of a partnership, the QDD tax liability for each QDD will be the gross income components of this section 3.09 instead of the tax liability under section 881 amounts. More specifically, the amount under section 3.09(B) is the dividend equivalent payments received as a QDD in its non-equity derivatives dealer capacity, and the amount under section 3.09(C) is any payments, such as dividends or interest, received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend equivalent payments. The section 3.09(C) amount is not reduced by withholding, although QDD will take any prior withholding into account when reporting the amounts covered by section 3.09(C) to the QI's partners and determining the appropriate withholding to those partners. Further, the QDD tax liability includes any withholding required of the partnership with respect to its partners on the section 3.09 amounts as modified for a QDD that is a partnership (or branch of a partnership).

For calendar years 2023 and 2024, the QDD (and its partners when the QDD is a partnership or a branch of a partnership) will not be liable for tax under section 871(a) or 881 on actual dividends on physical shares or deemed dividends or dividend equivalents that the QDD receives in its equity derivatives dealer capacity. The QDD is (and in the case of a QDD that is a partnership or a branch of a partnership, the QDD's direct and indirect partners are) liable for tax on actual dividends on physical shares or deemed dividends or dividend equivalents received in its non-equity derivatives dealer capacity and on any other U.S. source FDAP payments received by the QDD.

**(D) Timing for Determining QDD Tax Liability.** A QDD must determine its QDD tax liability due under sections 3.09(A) and (B) on the date provided in §1.871-15(j)(2) for the applicable dividend. A QDD must determine its QDD tax liability due under section 3.09(C) when the payments are treated as received under the Code and the regulations promulgated thereunder. A QDD that is a partnership or a branch of a partnership must determine its QDD tax liability under sections 3.09(A) and (B), including the dividend

equivalent payments received as a QDD in its non-equity derivatives dealer capacity, on the date provided in §1.871-15(j)(2) for the applicable dividend for withholding and reporting purposes.

See section 7.01(C) of this Agreement regarding a QI that is acting as a QDD's responsibility to report QDD tax liability on the appropriate U.S. tax return and to maintain a reconciliation schedule for its section 871(m) amount and other amounts related to its QDD tax liability. See also section 7.01(C) of this Agreement for additional information regarding the reporting and other responsibilities of a QDD that is a partnership or branch of a partnership.

#### **SECTION 4. PRIVATE ARRANGEMENT INTERMEDIARIES AND CERTAIN PARTNERSHIPS AND TRUSTS**

**Sec. 4.01. Private Arrangement Intermediaries—In General.** If QI is an FFI, QI may enter into a private arrangement with another intermediary under which the other intermediary agrees to perform all of the obligations of QI under this Agreement, except as modified in section 4.02 of this Agreement. QI, however, may not enter into a private arrangement under this section 4.01 with any account holder for which it acts as a QDD. The agreement between QI and the other intermediary shall be between QI and all the offices of the other intermediary located in a particular jurisdiction, which must be one for which the IRS has approved the know-your-customer rules. Such an intermediary is referred to in this Agreement as a private arrangement intermediary (PAI). By entering into a PAI agreement, QI is not assigning its liability for the performance of any of its obligations under this Agreement. Therefore, QI shall remain liable for any tax, penalties, interest, and any other sanctions that may result from the failure of the PAI to meet any of the obligations imposed by its agreement with QI. QI agrees not to assert any defenses against the IRS for the failures of the PAI or any defenses that the PAI may assert against QI. For purposes of this Agreement, the PAI's actual knowledge or reason to know of facts relevant to withholding or reporting shall be

imputed to QI. QI's liability for the failures of the PAI shall apply even though the PAI is itself a withholding agent and a payor under chapter 61 and section 3406 and is itself separately liable for its failure to meet its obligations under the Code. Notwithstanding the foregoing, QI shall not be liable for tax, interest, or penalties for failure to withhold and report under chapters 3, 4, and 61 and sections 1446(a), 1446(f), and 3406 unless the underwithholding or the failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or 8966 is due to QI's or its PAI's failure to properly perform its obligations under this Agreement. The PAI is not required to enter into an agreement with the IRS but must respond (either directly or through QI) to IRS inquiries related to its compliance, as described in section 10.08 of this Agreement. The IRS may, however, in its sole discretion, refuse to permit an intermediary to operate as a PAI by providing notice to QI. QI may, however, appeal the IRS's determination by following the notice and cure provisions in section 11.06 of this Agreement. For purposes of this Agreement, an intermediary shall be considered a PAI only if the following conditions are met:

**(A)** The PAI is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI) that acts as an intermediary with respect to reportable amounts and has provided QI with a certification that it has maintained such certified deemed-compliant FFI status during each certification period;

**(B)** The PAI does not act as an intermediary for a direct account holder that is a QI, WP, WT, participating FFI, registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI;

**(C)** The PAI is, pursuant to a written agreement between QI and the PAI (PAI agreement), subject to all the obligations of QI under this Agreement, except to the extent modified by sections 4.02 and 4.03 of this Agreement;

**(D)** For purposes of chapter 4, the PAI agrees to comply with the FATCA requirements applicable to its chapter 4 status as a certified deemed-compliant FFI, as modified by sections 4.02 and 4.03 of this Agreement, and is not required to fulfill QI's FATCA requirements as a participating FFI, registered deemed-compliant

FFI, or registered deemed-compliant Model 1 IGA FFI;

(E) QI identifies the PAI on QAAMS before the first payment for which the PAI is operating under the PAI agreement;

(F) The PAI agrees, to the extent necessary for QI to satisfy its compliance obligations (*i.e.*, if QI does not receive a waiver described in section 10.07 of this Agreement), either to provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement or to conduct an independent periodic review in accordance with the procedures described in section 10.05 of this Agreement and provide QI with the same certification as is required for QI's responsible officer under section 10.03 of this Agreement for each certification period in order to allow the responsible officer of QI to make a certification to the IRS regarding PAI's compliance. The PAI agrees to respond (either directly or through QI) to IRS inquiries regarding its periodic review and agrees to provide QI (and the IRS, upon request) with a periodic review report (as described in section 10.06 of this Agreement);

(G) The PAI furnishes QI with a Form W-8IMY and withholding statement described in section 6 of this Agreement as modified by this section 4.01(G). The PAI is required to provide QI with Forms W-9 (or, in absence of the form, the name, address, and U.S. TIN (if available)) of the PAI's U.S. non-exempt recipient account holders and the withholding rate pool information for those account holders as required by section 6.03(D) of this Agreement so that the QI (or the payor) may report on Form 1099 and, if required, backup withhold. In addition, the PAI is required to disclose to QI any account holder of PAI that is a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person) as defined in §§1.1471-1(b)(74) and 1.1473-1(b), respectively (or in the applicable IGA), and the account holders or interest holders of any nonqualified intermediary or flow-through entity, respectively, which has an account with the PAI, and provide all of the documentation and other information relating to those account holders and interest holders that is required for the QI, or another withholding agent, to report

the payments made to those account holders and interest holders to the extent required by sections 8.02(B) and 8.05 of this Agreement. Except to the extent the PAI provides its information to QI for purposes of performing the periodic review, the PAI is not required to disclose to QI, or another withholding agent, its direct account holders that are foreign persons other than a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person). The limitations on a PAI's disclosure of its direct account holders do not, however, apply with respect to the PAI's direct account holders' receipt of payments of PTP distributions or amounts realized from sales of PTP interests. For either such payment, a PAI is required to disclose to QI its direct account holders and provide any information requested by QI for QI to meet its withholding and reporting requirements specified in section 4.02(D) of this Agreement; and

(H) The PAI agrees to notify QI if the PAI no longer meets the requirements for certified deemed-compliant status, and upon such notification, the agreement between the PAI and QI will terminate.

#### **Sec. 4.02. Modification of Obligations for PAI Agreements.**

(A) **Payments Reportable under Chapters 3 and 4.** The agreement between QI and a PAI must provide that QI shall report all payments of amounts subject to chapter 3 or 4 withholding made by the PAI on QI's Forms 1042 and 1042-S as if QI had made the payments directly to the PAI's account holders. Therefore, QI shall report payments made to each of the following types of a PAI's account holders as follows:

(1) A direct account holder of the PAI that is a nonparticipating FFI, QI shall report an amount subject to chapter 4 withholding using the chapter 4 reporting pool described in section 8.03 of this Agreement with the PAI reported as the recipient with respect to the pool.

(2) A direct foreign account holder of the PAI for which no withholding is required under chapter 4 (other than an intermediary, custodian, nominee, agent, or flow-through entity described below), QI shall, except as otherwise provided in section 4.02(D) of this Agreement, report an amount subject to chapter 3 withholding

(excluding an amount subject to chapter 3 withholding on a PTP distribution) using the chapter 3 reporting pools as described in section 8.03 of this Agreement, with the PAI reported as the recipient.

(3) A direct foreign account holder of the PAI that is a nonqualified intermediary or flow-through entity, QI shall report payments of amounts subject to chapter 4 withholding with respect to any indirect account holders of the PAI that the nonqualified intermediary or flow-through entity includes in a chapter 4 withholding rate pool of nonparticipating FFIs using the chapter 4 reporting pool for such account holders described in section 8.03 of this Agreement with the nonqualified intermediary or flow-through entity reported as the recipient and shall report payments of amounts subject to chapter 3 withholding made with respect to indirect foreign account holders of the PAI that are not subject to chapter 4 withholding by reporting the payments as made to specific recipients under the rules of section 8.02 of this Agreement.

(B) **Form 1099 Reporting and Backup Withholding.** The agreement between QI and a PAI must also provide that QI shall report all reportable payments made by the PAI on QI's Forms 945 and 1099 to the extent required under this section 4.02(B). QI shall file Forms 1099 and backup withhold, if required, on reportable payments made by QI (including by a PAI) to U.S. non-exempt recipients that are direct or indirect account holders of a PAI in accordance with the terms of this Agreement.

(C) **Form 8966 Reporting.** The agreement between QI and a PAI must also provide that QI shall report all withholdable payments made by the PAI on Form 8966 to the extent required under this section 4.02(C). QI shall file Forms 8966 to report withholdable payments made by QI (including by a PAI) to passive NFFEs with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person) that are direct or indirect account holders of a PAI in accordance with section 8.05 of this Agreement.

(D) **Payments of Amounts Realized or PTP Distributions.** The agreement between QI and a PAI must provide that QI will satisfy the requirements set forth in section 8.07 of this Agreement with

respect to each account holder of PAI that is a partner receiving from QI a PTP distribution or amount realized from the sale of a PTP interest for which a statement under section 6031(b) is required for the taxable year (and for which the PAI will provide QI the necessary partner information). The agreement between QI and a PAI must further provide that QI shall treat the PAI as if the PAI were a disclosing QI with respect to both of the following—

(1) QI's reporting on Forms 1042 and 1042-S of an amount realized from the sale of a PTP interest or an amount subject to withholding on a PTP distribution paid to a direct account holder of the PAI (as further described in section 8 of this Agreement); and

(2) QI's determination of the withholding required on any such amount.

**Sec. 4.03. Other Requirements of PAI Agreements.** QI shall require a PAI to provide QI with all the information necessary for QI to meet its obligations under this Agreement. No provisions shall be contained in the agreement between QI and a PAI that preclude, and no provisions of this Agreement shall be construed to preclude, the PAI's joint and several liability for tax, penalties, and interest under chapters 3, 4, and 61 and section 3406 to the extent that underwithholding, penalties, and interest have not been collected from QI and the underwithholding or failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or Form 8966 are due to a PAI's failure to properly perform its obligations under its agreement with QI. Nothing in the agreement between QI and a PAI shall be construed to limit the PAI's requirements under chapter 4 or an applicable IGA. Further, nothing in the agreement between QI and a PAI shall permit the PAI to assume primary chapters 3 and 4 withholding responsibility, primary Form 1099 reporting and backup withholding responsibility, or primary withholding responsibility for a PTP distribution or an amount realized from the sale of a PTP interest.

**Sec. 4.04. Termination of Arrangement.** Except as otherwise provided in section 4.01(H) of this Agreement, QI shall cease to treat an intermediary as a PAI within 90 days from the day QI knows that the PAI is in default of its agreement with QI unless the PAI has cured the event

of default before the expiration of such 90-day period. QI must provide the IRS with notice of any PAI agreement that has been terminated within 30 days of the termination by removing the intermediary as a PAI on QAAMS.

**Sec. 4.05. Joint Account Treatment for Certain Partnerships and Trusts.**

**(A) In General.** If QI is an FFI, QI may enter an agreement with a non-withholding foreign partnership or non-withholding foreign trust that is either a simple or grantor trust described in this section 4.05(A) to apply the simplified joint account documentation, reporting, and withholding procedures provided in section 4.05(B) of this Agreement. QI and a partnership or trust that apply this section 4.05 to any calendar year must apply these rules to the calendar year in its entirety. QI and the partnership or trust may not apply this section 4.05 to any calendar year in which the partnership or trust has failed to make available to QI or QI's reviewer the records described in this section 4.05(A) within 90 days after these records are requested, and the partnership or trust must waive any legal prohibitions against providing such records to QI. If the partnership or trust has failed to make these records available within the 90-day period, or if QI and the partnership or trust fail to comply with any other requirements of this section 4.05, QI must apply the provisions of §§1.1441-1(c) and 1.1441-5(e) to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, must correct its withholding for the period during which the failure occurred in accordance with section 9.05 of this Agreement, and cannot apply this section 4.05 to subsequent calendar years. QI and a partnership or trust that apply this section 4.05 to any calendar year are not required to apply this section 4.05 to subsequent calendar years.

A partnership or trust is described in this section 4.05(A) of this Agreement if the following conditions are met:

(1) The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an exempt beneficial owner, or an NFFE or is covered as an account that is excluded from

the definition of financial account under Annex II of an applicable IGA or under §1.1471-5(a);

(2) The partnership or trust is a direct account holder of QI;

(3) None of the partnership's or trust's partners, beneficiaries, or owners is a flow-through entity or is acting as intermediary for a payment made by QI to the partnership or trust;

(4) None of the partnership's or trust's partners, beneficiaries, or owners is a U.S. person and none of its foreign partners, beneficiaries, or owners is subject to withholding or reporting under chapter 4 (e.g., a nonparticipating FFI and certain passive NFFEs); and

(5) The partnership or trust agrees to make available upon request to QI or QI's reviewer for purposes of QI's periodic review under section 10 of this Agreement (including to respond to IRS inquiries regarding its compliance review) records that establish that the partnership or trust has provided QI with documentation for purposes of chapters 3 and 4 for all of its partners, beneficiaries, or owners.

**(B) Modification of Obligations for QI.**

(1) QI may rely on a valid Form W-8IMY provided by the partnership or trust and may rely on a withholding statement that meets the requirements of §1.1441-5(c)(3)(iv) or (e)(5)(iv), and §1.1471-3(c)(3)(iii)(B) (if the payment is a withholdable payment) and that provides information for all partners, beneficiaries, or owners together with valid Forms W-8 or, in the case of a partnership or trust that is a certified deemed-compliant FFI, documentary evidence permitted under the applicable know-your-customer rules from each partner, beneficiary, or owner, and, for a withholdable payment, documentation that meets the requirements of §1.1471-3(d) to establish the partner's, beneficiary's, or owner's chapter 4 status. The withholding statement need not provide any allocation information. QI may not, however, rely on a Form W-8IMY that is associated with a PTP distribution or amount realized from the sale of a PTP interest for purposes of this section 4.05.

(2) QI must treat payments to the partnership or trust as allocated solely to a partner, beneficiary, or owner that is subject to the highest rate of withholding

under chapter 3 and must withhold at that rate.

(3) QI may pool report amounts distributive to, or included in the distributive share of, the partnership's or trust's direct partners, beneficiaries, or owners in chapter 3 reporting pools on Form 1042-S as described in section 8.03(B) of this Agreement.

(4) After QI has withheld in accordance with section 4.05(B)(2) of this Agreement, it may file a separate Form 1042-S for any partner, beneficiary, or owner who requests that it do so. If QI issues a separate Form 1042-S for any partner, beneficiary, or owner, it cannot include such partner, beneficiary, or owner in its chapter 3 reporting pool. If QI has already filed a Form 1042-S and included the partner, beneficiary, or owner in a chapter 3 reporting pool, it must file an amended return to reduce the amount of the payment reported to reflect the amount allocated to the recipient on the recipient's specific Form 1042-S. QI may file a separate Form 1042-S for a partner, beneficiary, or owner only if the partnership or trust provides a withholding statement that includes allocation information for the requesting partner, beneficiary, or owner and only if the partnership or trust has agreed in writing to make available to QI or QI's reviewer the records that substantiate the allocation information included in its withholding statement.

(5) QI may not include any payments made to a partnership or trust to which QI is applying the rules of this section 4.05 in any collective refund claim made under section 9.04 of this Agreement.

#### **Sec. 4.06. Agency Option for Certain Partnerships and Trusts.**

(A) **In General.** QI may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in section 4.06(A) of this Agreement under which the partnership or trust agrees to act as an agent of QI with respect to its partners, beneficiaries, or owners, and, as QI's agent, to apply the provisions of the QI agreement to the partners, beneficiaries, or owners. QI, however, may not enter an agreement under this section 4.06 with any account holder for which it acts as a QDD. By entering into an agreement with a partnership or trust as described in

this section 4.06, QI is not assigning its liability for the performance of any of its obligations under this Agreement. QI and the partnership or trust to which QI applies the rules of this section 4.06 are jointly and severally liable for any tax, penalties, and interest that may result from the failure of the partnership or trust to meet any of the obligations imposed by its agreement with QI. QI and a partnership or trust that applies the agency option to any calendar year must apply these rules to the calendar year in its entirety. Generally, QI and a partnership or trust that applies the agency option to any calendar year are not required to apply the agency option to subsequent calendar years. If, however, QI withholds and reports any adjustments required by corrected information in a subsequent calendar year under section 4.06(B)(2) of this Agreement, QI must apply the agency option to that calendar year in its entirety. QI and a partnership or trust may not apply the agency option to any calendar year when the partnership or trust has failed to make available to QI or QI's reviewer the records described in section 4.06 of this Agreement within 90 days after these records are requested, and the partnership or trust must waive any legal prohibitions against providing such records to QI. If, for any calendar year, the partnership or trust has failed to make these records available within the 90-day period, or if QI and the partnership or trust fail to comply with any other requirement of this section 4.06, QI must apply §§1.1441-1(c) and 1.1441-5(e) to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, must correct its withholding for the period in which the failure occurred in accordance with section 9.05 of this Agreement, and cannot apply the agency option to subsequent calendar years.

A partnership or trust is described in this section 4.06(A) of this Agreement if the following conditions are met:

(1) The partnership or trust is either a direct account holder of QI or an indirect account holder of QI that is a direct partner, beneficiary, or owner of a partnership or trust to which QI also applies the agency option.

(2) The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI (other than a registered

deemed-compliant Model 1 IGA FFI), an owner-documented FFI, an NFFE, an exempt beneficial owner, or is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under §1.1471-5(a) and has provided QI with a certification that it has maintained such chapter 4 status during each certification period;

(3) None of the partnership's or trust's partners, beneficiaries, or owners is a WP, WT, participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or another QI acting as an intermediary for a payment made by QI to the partnership or trust.

(4) The partnership or trust agrees to permit QI to treat its direct partners, beneficiaries, or owners as direct account holders of QI under this Agreement and to treat its indirect partners, beneficiaries, or owners as indirect account holders of QI under this Agreement.

(5) The partnership or trust agrees, to the extent necessary for QI to satisfy its compliance obligations (e.g., if the QI does not receive a waiver described in section 10.07 of this Agreement), either to provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement or to conduct an independent periodic review in accordance with the procedures described in section 10.05 of this Agreement, provide QI with the certification required under section 10.03 of this Agreement for each certification period in order to allow the responsible officer of QI to make a certification to the IRS regarding the partnership's or trust's compliance with this section 4.06, and respond (either directly or through QI) to IRS inquiries regarding its compliance review, as described in section 10.08 of this Agreement, including providing the QI and the IRS with the results of the reviewer's testing of transactions and accounts described in section 10.06 of this Agreement.

(6) For a partnership or trust to which QI pays an amount subject to withholding under section 1446(a) on a PTP distribution, the partnership is not a PTP, and the trust is a grantor trust (with the partnership or trust providing its U.S. TIN to QI). For a partnership or trust to which QI pays

an amount realized, the partnership is a partnership providing a certification for a modified amount realized, and the trust is a grantor trust (with the partnership or trust providing its U.S. TIN to QI).

**(B) Modification of Obligations for QI.**

**(1) In General.** QI may rely on a valid Form W-8IMY provided by the partnership or trust, together with a withholding statement described in §1.1441-5(c)(3)(iv) or (e)(5)(iv) and §1.1471-3(c)(3)(iii)(B) (if the payment is a withholdable payment) that includes all information necessary for QI to fulfill its withholding, reporting, and filing obligations under this Agreement. The withholding statement may include chapter 3 withholding rate pools for partners, beneficiaries, or owners that are not intermediaries, flow-through entities (or persons holding interests in the partnership or trust through such entities), U.S. persons, or passive NFFEs with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person), and the partnership or trust need not provide to QI documentation for these partners, beneficiaries, or owners. The withholding statement may also include a chapter 4 withholding rate pool of non-participating FFIs described in section 6.03 of this Agreement for payments of amounts subject to chapter 4 withholding. Notwithstanding the preceding sentences of this section 4.06(B)(1), the partnership or trust is required to disclose to QI any interest holder that is a passive NFFE with substantial U.S. owners (or controlling persons that are specified U.S. persons) or that is a U.S. non-exempt recipient, as well as the account holders or interest holders of any nonqualified intermediary or flow-through entity, respectively, which has an interest in the partnership or trust, and to provide all of the documentation and other information relating to those account holders and interest holders that is required for the QI, or another withholding agent, to report the payments made to those account holders and interest holders to the extent required by sections 8.02(B) and 8.05 of this Agreement.

**(2) Timing of Withholding.** QI must withhold on the date it makes a payment to the partnership or trust based on a withholding statement provided by the partnership or trust on which QI is permitted to

rely. The amount allocated to each partner, beneficiary, or owner in the withholding statement may be based on a reasonable estimate of the partner's, beneficiary's, or owner's distributive share of income subject to withholding for the year. The partnership or trust must correct the estimated allocations to reflect the partner's, beneficiary's, or owner's actual distributive share and must provide this corrected information to QI on the earlier of the date that the statement required under section 6031(b) (*i.e.*, Schedule K-1) or the Beneficiary Statement or Owner Statement is mailed or otherwise provided to the partner, beneficiary, or owner, or the due date for furnishing the statement (whether or not the partnership or trust is required to prepare and furnish the statement). If that date is after the due date (without regard to extensions) for QI's Forms 1042 and 1042-S for the calendar year, QI may withhold and report any adjustments required by the corrected information in the following calendar year.

**(3) Payments Reportable Under Chapters 3 and 4.** QI shall report on Form 1042-S all amounts subject to chapters 3 and 4 withholding distributed to, or included in the distributive share of, the partnership or trust as follows:

**(i)** For a direct partner, beneficiary, or owner of the partnership or trust that is a nonparticipating FFI, QI shall report an amount subject to withholding using the chapter 4 reporting pool described in section 8.03(A) of this Agreement with the partnership or trust reported as a recipient.

**(ii)** For a direct partner, beneficiary, or owner of the partnership or trust that is a foreign person for which no withholding is required under chapter 4 (other than an intermediary, agent, or flow-through entity described below), QI shall report an amount subject to chapter 3 withholding using the chapter 3 reporting pools described in section 8.03(B) of this Agreement with the partnership or trust reported as a recipient.

**(iii)** For a direct or indirect partner, beneficiary, or owner of the partnership or trust that is a nonqualified intermediary or foreign flow-through entity, QI shall report payments of amounts subject to chapter 4 withholding in a

chapter 4 withholding rate pool of non-participating FFIs using the chapter 4 reporting pool for such partner, beneficiary, or owner with the nonqualified intermediary or foreign flow-through entity reported as the recipient, and QI shall report payments of amounts subject to chapter 3 withholding for which no chapter 4 withholding is required by reporting the payments as made to specific recipients as described in section 8.02 of this Agreement.

**(4) Payments Reportable under Section 1446(a) or (f).** QI shall report on Form 1042-S payments of amounts realized or amounts subject to withholding under section 1446(a) in accordance with section 4.06(B)(3) of this Agreement, taking into account the reporting required on these payments under section 8.02 of this Agreement with respect to a flow-through entity or nonqualified intermediary.

**(5) Form 1099 Reporting and Backup Withholding.** The agreement between QI and the partnership or trust must also provide that QI shall include all reportable payments made by the partnership or trust in QI's Forms 945 and 1099 to the extent required under this section 4.06(B)(4). QI shall file Forms 1099 and backup withhold, if required, on reportable payments made by QI to U.S. non-exempt recipient that are direct or indirect partners, beneficiaries, or owners of the partnership or trust in accordance with the terms of this Agreement.

**(6) Form 8966 Reporting Requirements.** The agreement between QI and the partnership or trust must also provide that QI shall report all withholdable payments made by the partnership or trust on Form 8966 to the extent required under this section 4.06(B)(5). If the partnership or trust is itself a passive NFFE and if any of its partners, beneficiaries, or owners is a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person), QI shall file Forms 8966 to report all withholdable payments made by QI to any such passive NFFE in accordance with sections 8.04 and 8.05 of this Agreement.

**(C) Other Requirements of Agency Agreement.** QI shall require the partnership or trust to provide QI with all the information necessary for QI to meet its obligations under this Agreement. No

provisions shall be contained in the agreement between QI and the partnership or trust that preclude, and no provisions of this Agreement shall be construed to preclude, the partnership or trust's joint and several liability for tax, penalties, and interest under chapters 3, 4, and 61 and section 3406, to the extent that the under-withholding, penalties, and interest have not been collected from QI and the under-withholding or failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or 8966 is due to the partnership's or trust's failure to properly perform its obligations under its agreement with QI. Nothing in the agreement between QI and the partnership or trust shall be construed to limit the partnership or trust's requirements under chapter 4 as a certified deemed-compliant FFI, owner-documented FFI, NFFE, or exempt beneficial owner. Further, nothing in the agreement between QI and the partnership or trust shall permit the partnership or trust to assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility.

## **SECTION 5. DOCUMENTATION REQUIREMENTS**

### **Sec. 5.01. Documentation Requirements.**

**(A) General Documentation Requirements.** QI agrees to use its best efforts to obtain documentation from account holders that receive a reportable payment to determine whether withholding applies or whether a payment is reportable under this Agreement. Under section 11.06 of this Agreement, failure to obtain documentation from a significant number of direct account holders constitutes an event of default. If QI is an FFI obtaining documentary evidence, QI also agrees to adhere to the know-your-customer rules that apply to QI with respect to the account holder from whom the documentary evidence is obtained. If QI cannot reliably associate a reportable payment with valid documentation from the account holder, it must apply the applicable presumption rules to determine if withholding is required under chapter 3 or 4 or if backup withholding is required under section 3406. QI agrees to review and maintain documentation in

accordance with this section 5 and, in the case of documentary evidence obtained from direct account holders, in accordance with the applicable know-your-customer rules. QI also agrees, if the performance of an external review is requested by the IRS (as described in section 10.08(C) of this Agreement), to make documentation (together with any associated withholding statements and other documents or information) available upon request for inspection by QI's external reviewer. QI represents that none of the laws to which it is subject prohibit disclosure of the identity of any account holder or account information to QI's reviewer.

If QI is acting as a QDD, QI is required to apply the rules of this section 5 to each account holder of an account for which it is acting as a QDD and to which it makes a reportable payment in accordance with the applicable requirements in section 5.01(A) and (B) of this Agreement. In addition, if QI is a partnership and is or has a branch that is a QDD, QI is required to apply the rules of this section 5 to each of its partners (looking through partners that are flow-through entities) in determining its withholding under section 3.03(A) of this Agreement.

If QI makes a payment of an amount realized on a sale of a PTP interest or a payment of a PTP distribution, QI also agrees to use its best efforts to obtain the documentation that is described in section 5.02 of this Agreement. For purposes of obtaining a U.S. TIN from an account holder that is a partner with respect to documentation required under section 5.02(B) or (C) of this Agreement, QI is treated as using its best efforts when QI makes a written solicitation (initial solicitation) for the account holder's U.S. TIN in 2023 or the calendar year in which an account holder acquires a PTP interest through QI (if later). If an account holder's U.S. TIN is not provided based on the initial solicitation, QI is required to make an additional written solicitation for the account holder's U.S. TIN in the calendar year following the calendar year of the initial solicitation, and, if necessary, a further written solicitation in the calendar year following the year of the additional solicitation. Nothing in the preceding sentence shall, however, be construed to allow QI to apply a reduced rate of withholding

under section 1446(a) or (f) with respect to a payment made to a foreign account holder that fails to provide a U.S. TIN to QI for any calendar year. QI further agrees to treat a partner as a foreign partner and a broker as a foreign broker when required under section 5.13(C)(5) of this Agreement for a payment of an amount realized or the amount of a PTP distribution subject to withholding under section 1446(a).

### **(B) Coordination of Chapter 3 and Chapter 4 Documentation Requirements.**

**(1) QI that is an FFI.** If QI is an FFI, for each account holder for whom QI is acting under this Agreement, QI is required to perform the due diligence procedures under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to determine if the account is a U.S. account (or U.S. reportable account) and to determine each account holder that is a nonparticipating FFI and, if applicable, recalcitrant account holder (or non-consenting U.S. account). If an account holder receiving the payment is not the payee, QI is also required to establish the chapter 4 status of the payee or payees to determine whether withholding applies under chapter 4. For purposes of this section 5, with respect to documenting an account holder for chapter 4 purposes, documentary evidence also includes any documentary evidence allowed under an applicable IGA.

To the extent an account holder receives a payment with respect to which QI has determined that withholding is not required under chapter 4, QI shall obtain, unless already collected, documentation that meets the requirements of this section 5 to determine whether the account holder is a foreign person for which QI is required to withhold under chapter 3 or a U.S. payee for which QI is required to backup withhold under section 3406 or report on Form 1099 under chapter 61. See, however, section 8.06 of this Agreement providing the circumstances in which reporting of U.S. accounts (or U.S. reportable accounts) under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI satisfies QI's Form 1099 reporting responsibilities.



**(2) QI that is an NFFE.** If QI is an NFFE, QI is required to document the chapter 4 status of each account holder for whom QI is acting to determine if withholding and reporting apply under section 1471 or 1472 on withholdable payments made to the account holder. QI is required to obtain, unless already collected, a valid Form W-8 or Form W-9 from each account holder to determine whether QI is required to withhold under chapter 3 or 4 or report on Form 1099 under chapter 61 and backup withhold under section 3406. The allowance in this section 5 for QI to obtain documentary evidence does not apply if QI is an NFFE. QI may, however, obtain appropriate documentary evidence as additional documentation to establish the foreign status of an account holder.

**Sec. 5.02. Documentation for Foreign Account Holders.**

**(A) Documentation for Chapters 3 and 4.** QI may treat an account holder as a foreign beneficial owner of an amount for purposes of chapter 3 or 4 if the account holder provides a valid Form W-8 (other than Form W-8IMY unless provided by a QI that is acting as a QDD that is a corporation (or a branch of a corporation) and meets the requirements of section 5.07(E) of this Agreement or a QI that is assuming primary withholding responsibility for a substitute interest payment) or valid documentary evidence that supports the account holder's status as a foreign person. QI may not treat an account holder that provides documentation indicating that it is a bank, broker, intermediary, or agent (such as an attorney) as a beneficial owner unless QI receives a statement, in writing and signed by a person with authority to sign such a statement, stating that such account holder is the beneficial owner of the income. Further, QI may not reduce the rate of withholding with respect to an indirect account holder that is a foreign beneficial owner unless the certification provided by the direct account holder is a valid Form W-8IMY, and then only to the extent that QI can reliably associate the payment with valid documentation that establishes that withholding does not apply under chapter 4 in the case of a withholdable payment made to the account holder and establishes that the indirect account holder is entitled to a reduced rate of withholding under chapter 3.

**(B) Documentation for Section 1446(a).** QI must treat an account holder that is a partner receiving a payment of a PTP distribution subject to withholding under section 1446(a) as a foreign partner if the account holder provides a valid Form W-8 other than a Form W-8IMY provided by an intermediary, grantor trust, or partnership (excluding a PTP) that includes the account holder's U.S. TIN. Alternatively, QI must treat an account holder described in the preceding sentence as a foreign partner when QI has both valid documentary evidence that supports the account holder's status as a foreign person and the account holder's U.S. TIN. See, however, §1.1446-4(e)(4) for QI's requirement to provide Forms W-8 for the amount of a PTP distribution subject to withholding under section 1446(a) when acting as a disclosing QI and section 5.01(A) of this Agreement for the extent of QI's requirement to collect U.S. TINs from its account holders for purposes of section 1446(a).

**(C) Documentation for Section 1446(f).** QI must treat an account holder receiving a payment of an amount realized as a foreign partner if the account holder provides a valid Form W-8 (other than a Form W-8IMY provided by a broker or grantor trust) that includes the account holder's U.S. TIN. Alternatively, QI must treat an account holder described in the preceding sentence as a foreign partner when QI has both valid documentary evidence that supports the account holder's status as a foreign person and the account holder's U.S. TIN. See, however, §1.1446(f)-4(a)(7)(iii) for QI's requirement to provide Forms W-8 when acting as a disclosing QI for an amount realized and section 5.01(A) of this Agreement for the extent of QI's requirement to collect U.S. TINs from its account holders for purposes of section 1446(f). With respect to an amount realized QI pays to a broker, QI may rely on documentation that is permitted under §1.1446(f)-4(a)(5) for treating the broker as a foreign person.

**Sec. 5.03. Beneficial Owner's Claim of Treaty Benefits.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not reduce the rate of withholding under chapter 3 based on a beneficial owner's claim of treaty benefits unless

QI obtains the documentation required by section 5.03(A) of this Agreement. In addition, QI agrees to establish procedures to inform account holders of the terms of limitation on benefits provisions of a treaty (whether or not those provisions are contained in a separate article entitled Limitation on Benefits) under which the account holder is claiming benefits. QI is required to obtain a Form W-8BEN-E with the appropriate limitation on benefits certification or, if QI is allowed to and obtains documentary evidence, the written certification included in the treaty statement as described in section 5.03(B) of this Agreement. For a direct account holder documented by QI on or after January 1, 2018, using documentary evidence, QI must have a permanent residence address for the account holder in the jurisdiction associated with the documentary evidence to reduce the rate of withholding under this section 5.03.

If an account holder that is a foreign partner receives an amount subject to withholding under section 1446(a) on a PTP distribution or an amount realized, the documentation described in section 5.03(A)(1) of this Agreement shall be permitted for the partner's claim of treaty benefits (except that a U.S. TIN for the foreign partner is required), and sections 5.03(A)(2) and (3) of this Agreement shall not apply. See, however, section 5.07 of this Agreement in the case of an amount realized paid to a nonqualified intermediary.

**(A) Treaty Documentation.** The documentation required by this section 5.03(A) is as follows:

**(1)** The account holder has provided a properly completed Form W-8BEN or Form W-8BEN-E on which a claim of treaty benefits is made, including, for an entity, the appropriate limitation on benefits and section 894 certifications, as provided in §1.1441-6(b)(1). A U.S. TIN or foreign TIN shall not be required, however, if the beneficial owner is a direct account holder. An indirect account holder is required to have either a U.S. TIN or foreign TIN to claim treaty benefits unless it is claiming treaty benefits on income from marketable securities;

**(2)** The account holder has provided documentary evidence that has been obtained pursuant to the know-your-customer rules

that apply to the account holder, and the account holder, if it is an entity, has made the treaty statement (if applicable) required by section 5.03(B) of this Agreement; or

(3) The account holder provides the type of documentary evidence required under §1.1441-6 to establish entitlement to a reduced rate of withholding under a treaty, and the account holder, if it is an entity, has made the treaty statement (if applicable) required by section 5.03(B) of this Agreement.

**(B) Treaty Statement.** The treaty statement required by an entity account holder under this section 5.03(B) is as follows:

[Name of entity account holder] meets all provisions of the applicable treaty that are necessary to claim a reduced rate of withholding, including any limitation on benefits provisions, and derives the income within the meaning of section 894, and the regulations thereunder, as the beneficial owner.

QI is only required to obtain the treaty statement required by this section 5.03(B) from an account holder that is an entity. QI shall not be required to obtain a treaty statement required by this section 5.03(B) from an individual who is a resident of an applicable treaty country or from the government, or its political subdivisions, of a treaty country. QI is also required to collect and to report, on a Form 1042-S issued under section 8.02(P) of this Agreement, the specific category of limitation on benefits provision claimed from all of its entity account holders (i.e., the specific article of the treaty or that no article applies), including a government (or its political subdivisions).

**Sec. 5.04. Documentation for International Organizations.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not treat the account holder as an international organization entitled to an exemption from withholding under section 892 unless the name provided on the documentation (including a Form W-8EXP) is the name of an entity designated as an international organization by executive order pursuant to 22 United States Code 288 through 288(f) and the documentation is valid under section 5.10 of this Agreement. An international organization may not, however, claim benefits

under this section 5.04 with respect to QI's requirement to withhold under section 1446(a) or (f).

If an international organization is not claiming benefits under section 892 but under another Code exception, the provisions of section 5.02 of this Agreement shall apply rather than the provisions of this section 5.04.

**Sec. 5.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.**

**(A) Documentation From a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption from Withholding Under Section 892 or Section 895.** To the extent an account holder receives a payment subject to withholding under chapter 3 that is not subject to withholding under chapter 4, QI may not treat an account holder as a foreign government or foreign central bank of issue exempt from withholding under section 892 or 895 unless—

(1) QI receives from the account holder a Form W-8EXP or documentary evidence establishing that the account holder is a foreign government or foreign central bank of issue;

(2) The income paid to the account holder is the type of income that qualifies for an exemption from withholding under section 892 or 895; and

(3) QI does not know, or have reason to know, that the account holder is a controlled commercial entity as described in section 892, that the income owned by the foreign government or foreign central bank of issue is being received from a controlled commercial entity, or that the income is from the disposition of an interest in a controlled commercial entity.

**(B) Treaty Exemption.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may treat an account holder as a foreign government or foreign central bank of issue entitled to a reduced rate of withholding under an income tax treaty for purposes of chapter 3 if it has valid documentation that is sufficient to obtain a reduced rate of withholding under a treaty as described in section 5.03 of this Agreement.

**(C) Other Code Exception.** If a foreign government or foreign central bank of issue is not claiming benefits under

section 892 or under an income tax treaty but under another Code exception (e.g., the portfolio interest exception under section 871(h) or 881(c)), the provisions of section 5.02 of this Agreement apply rather than the provisions of this section 5.05. A foreign government or foreign central bank of issue may not claim benefits under section 892 with respect to QI's requirement to withhold under section 1446(a) or (f).

**Sec. 5.06. Documentation for Foreign Tax-Exempt Organizations.** To the extent an account holder receives a payment that is subject to withholding under chapter 3 or section 1446(a) on a PTP distribution but not under chapter 4, QI may not treat an account holder as a foreign tax-exempt organization and reduce the rate of or exempt the account holder from withholding unless it satisfies the requirements provided in section 5.06(A), (B), or (C) of this Agreement.

**(A) Reduced Rate of Withholding Under Section 501.** QI may not treat an account holder as a foreign organization described under section 501(c), and therefore exempt from withholding under chapter 3 (or, if the account holder is a foreign private foundation, subject to withholding at a 4-percent rate under section 1443(b)) unless QI obtains a valid Form W-8EXP on which Part IV of the form is completed.

**(B) Reduced Rate of Withholding Under Treaty.** QI may not treat an account holder as a foreign organization that is tax-exempt on an item of income pursuant to an income tax treaty unless QI obtains valid documentation as described under section 5.03 of this Agreement that is sufficient for obtaining a reduced rate of withholding under the treaty and the documentation establishes that the account holder is an organization exempt from tax under the treaty on that item of income.

**(C) Other Exceptions.** If a tax-exempt entity is not claiming a reduced rate of withholding because it is a foreign organization described under section 501(c) or under a treaty article that applies to exempt certain foreign organizations from tax but is claiming a reduced rate of withholding under another Code or income tax treaty exception, the provisions of section 5.02 or 5.03 (as applicable) of this Agreement shall apply rather than the provisions of this section

5.06. A tax-exempt entity may not claim a reduced rate of withholding under section 501 for purposes of QI's withholding under section 1446(f).

**Sec. 5.07. Documentation from Intermediaries or Flow-Through Entities and QDDs.** QI must apply the presumption rules to a payment made to a nonqualified intermediary or flow-through entity that is a direct account holder of QI to the extent QI fails to obtain the documentation set forth below. If QI receives documentation for the account holders or interest holders of an intermediary or flow-through entity, QI must apply the rules of this section 5 to determine the validity of such documentation.

Notwithstanding the previous provisions of this section 5.07, for an amount realized paid to a nonqualified intermediary, QI is required to apply the presumption rule provided in section 5.13(C)(5) of this Agreement regardless of whether the nonqualified intermediary provides a valid Form W-8IMY and documentation with respect to the account holders receiving the amount realized.

**(A) Withholdable Payments Made to Nonqualified Intermediaries and Flow-Through Entities.** With respect to a withholdable payment made to a nonqualified intermediary or flow-through entity—

(1) QI receives a valid Form W-8IMY provided by the nonqualified intermediary or the flow-through entity receiving the payment that establishes the chapter 4 status of the intermediary or flow-through entity; and

(2) If the payment is not subject to withholding under chapter 4 based on such entity's chapter 4 status (or to the extent the payment is received on behalf of exempt beneficial owners), QI can reliably associate the payment with a withholding statement that meets the requirements of §1.1471-3(c)(iii)(B) that includes the account holders or interest holders of the intermediary or flow-through entity in chapter 4 withholding rate pools to the extent permitted or with valid documentation described in this section 5 provided by account holders or interest holders of the intermediary or flow-through entity that are not themselves nonqualified intermediaries or flow-through entities and that QI can treat as not subject to withholding under chapter 4.

**(B) Reportable Payments Other than Withholdable Payments or Payments with respect to PTP interests Made to Nonqualified Intermediaries and Flow-Through Entities.** With respect to a reportable payment that is not a withholdable payment or an amount realized made to a nonqualified intermediary or flow-through entity—

(1) QI receives a valid Form W-8IMY and a withholding statement with the information specified in §1.1441-1(e)(3)(iv)(C) (which includes an alternative withholding statement) provided by the nonqualified intermediary or the flow-through entity regardless of whether the form includes a chapter 4 status of the nonqualified intermediary or flow-through entity unless such entity provides a withholding statement allocating a payment to a chapter 4 withholding rate pool of U.S. payees; and

(2) QI can reliably associate the payment with a chapter 4 withholding rate pool of U.S. payees or valid documentation described in this section 5 provided by account holders or interest holders of the nonqualified intermediary or flow-through entity that are not themselves nonqualified intermediaries or flow-through entities.

**(C) Payments with respect to PTP Interests Made to Nonqualified Intermediaries and Flow-Through Entities.**

(1) **Amount Realized.** With respect to a payment by QI of an amount realized from the sale of a PTP interest made to a flow-through entity or nonqualified intermediary, the documentation that QI receives is a valid Form W-8IMY from the entity except for a foreign simple trust (for which a Form W-8BEN-E may instead be received) and a U.S. grantor trust (for which a document similar to Form W-8IMY may be received). In the case of a foreign partnership providing the certification on a valid Form W-8IMY for a modified amount realized (which requires a U.S. TIN for the partnership) QI is required to obtain from the partnership the documentation described in this section 5 with respect to the partners that QI can reliably associate with the payment. For a grantor trust to which QI pays an amount realized, QI is further required to obtain valid documentation described in this section 5 that QI can reliably associate with each grantor or

owner of the trust and must obtain a U.S. TIN for the trust.

(2) **PTP Distribution.** With respect to a payment by QI of a PTP distribution to a nonqualified intermediary, the documentation that QI receives from the intermediary is a valid Form W-8IMY (including its chapter 4 status for an amount of a distribution attributable to a withholdable payment) and documentation for each of the account holders of the nonqualified intermediary that are partners in the PTP that QI can reliably associate with each amount subject to withholding on the distribution (including by applying section 5.13(B)(1) of this Agreement for any amount realized on the distribution). With respect to a payment by QI of a PTP distribution to a flow-through entity, the documentation that QI receives from the flow-through entity is as follows—

(i) For the amount of the distribution subject to withholding under section 1446(a) made to a foreign partnership, QI receives a valid Form W-8IMY from the partnership and, for a foreign partnership other than a PTP, valid documentation described in this section 5 on each of the partners in the partnership that QI can reliably associate with the distribution (including a U.S. TIN for the partnership in both cases). See §§1.1446-4 and 1.1446-5(c). For the portion of the distribution subject to withholding under section 1446(a) made to a trust, QI receives a valid Form W-8BEN-E or W-8IMY from a simple trust or, in the case of a foreign grantor trust, a valid Form W-8IMY from the trust (or similar document from a U.S. grantor trust) and valid documentation on each grantor or owner of the trust permitted under this section 5 for a payment subject to section 1446(a) withholding that QI can reliably associate with the distribution (including a U.S. TIN for the grantor trust).

(ii) For the amount of the distribution subject to withholding under chapter 3 or 4, QI receives a valid Form W-8IMY from the flow-through entity (which includes the entity's chapter 4 status with respect to any amount of a distribution attributable to a withholdable payment) and valid documentation on the interest holders in the entity (other

than nonqualified intermediaries or flow-through entities) permitted under this section 5 for a payment subject to chapter 3 or 4 withholding that QI can reliably associate with the distribution.

(iii) For the amount realized on the distribution, QI receives from the flow-through entity valid documentation specified in section 5.07(C)(1) of this Agreement applicable to a flow-through entity that QI can reliably associate with the distribution.

**(D) Reportable Payments and Payments with respect to PTP Interests Made to QIs, WPs, and WTs.** With respect to a reportable payment made to a QI, WP, or WT, QI receives a valid Form W-8IMY provided by the QI, WP, or WT that includes the entity's chapter 4 status for a payment that is a withholdable payment and, for those payments for which a QI has not assumed primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility, QI can reliably associate the payment with withholding rate pools, as described in section 6.03 of this Agreement, or a valid Form W-9 for a U.S. non-exempt recipient account holder not included in a withholding rate pool.

With respect to a payment of an amount realized on the sale of a PTP interest made by QI to a QI, QI receives a valid Form W-8IMY provided by the other QI that includes the QI's chapter 4 status if the QI provides a withholding statement allocating a payment to a chapter 4 withholding rate pool of U.S. payees. Additionally, for an amount realized for which the other QI does not assume primary withholding responsibility nor act as a disclosing QI, QI can reliably associate the payment with withholding rate pools, as described in section 6.03 of this Agreement, or a valid Form W-9 for a U.S. partner not includible in a chapter 4 withholding rate pool of U.S. payees under chapter 4. See §1.1446(f)-4(a)(7)(iv). For an amount realized described in the preceding sentence that QI pays to a QI acting as a disclosing QI, QI receives valid documentation permitted under section 5.02(C) of this Agreement with respect to the account holders of the other QI, including a valid Form W-9 for a U.S. partner not includible in a chapter 4 withholding rate pool of U.S. payees permitted under chapter 4.

With respect to a PTP distribution paid by QI to a QI, QI receives a valid Form W-8IMY provided by the other QI that includes the QI's chapter 4 status for any portion of the PTP distribution attributable to a withholdable payment. Additionally, for a PTP distribution for which the other QI does not assume primary withholding responsibility nor act as a disclosing QI, QI can reliably associate the payment with withholding rate pools, as described in section 6.03 of this Agreement, or a valid Form W-9 for each partner that is a U.S. person. For a PTP distribution that QI pays to a QI acting as a disclosing QI, QI receives with respect to the account holders of the other QI valid documentation required of a disclosing QI under section 5.02(B) of this Agreement for an amount subject to withholding under section 1446(a) on the distribution, valid documentation permitted under the preceding paragraph of this section 5.07(D) for an amount realized on the distribution, and, for an amount subject to withholding under chapter 3 or 4 on the distribution, valid documentation described in section 5.07(A) or (B) of this Agreement.

With respect to a PTP distribution paid to a WP or WT, QI receives a valid Form W-8IMY provided by the WP or WT that QI can reliably associate with an amount subject to withholding under chapter 3 or 4 on the distribution.

**(E) Payments Made to QIs Acting as QDDs.** For payments with respect to potential section 871(m) transactions or underlying securities made to a QI acting as a QDD, if QI receives a valid Form W-8IMY provided by the QI acting as a QDD that includes the QI's chapter 4 status and the required certification that the QI is acting as a QDD and assumes primary withholding responsibility for payments it makes when the QI is acting as a QDD and QDD withholding statement, then QI can reliably associate the payments as made to the QI acting as a QDD. Additionally, in the case of a QDD identified on a valid Form W-8IMY as a partnership (or a branch of a partnership), the QI can reliably associate a payment described in section 3.09 of this Agreement, as modified for a QDD that is a partnership or branch of a partnership, with withholding rate pools to the extent permitted in section 6.03 of this Agreement for an account

holder, or specific partner information, with respect to the QDD partners (looking through partners that are foreign flow-through entities). The requirement for the partner information specified in the preceding sentence does not apply to a payment described in sections 3.03(A)(1)-(3) of this Agreement.

**(F) Private Arrangement Intermediaries.** If QI has an agreement with a PAI, QI obtains from the PAI a Form W-8IMY completed as if the PAI were a QI that is an FFI (with the exception that the PAI must not provide a QI-EIN on the Form W-8IMY) and QI can reliably associate the payment with a withholding statement, as described in section 4.01(G) of this Agreement, and the information described in this section 5.07 for any account holders of the PAI that are intermediaries or flow-through entities and the documentation for any passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person if QI is a reporting Model 1 or reporting Model 2 FFI). For a payment of an amount realized from the sale of a PTP interest or PTP distribution, however, QI must reliably associate the payment with a withholding statement and the information described in this section 5 with respect to both the direct account holders of the PAI and account holders of an intermediary or flow-through entity that is an account holder of the PAI.

**(G) Partnerships or Trusts to which QI Applies the Agency Option.** If QI has an agreement with a partnership or trust under which the partnership or trust agrees to act as an agent of QI, QI obtains from the partnership or trust a Form W-8IMY completed as if the partnership or trust were a QI (with the exception that the partnership or trust must not provide a QI-EIN on the Form W-8IMY) and QI can reliably associate the payment with a withholding statement, as described in section 4.06(B)(1) of this Agreement, and the information described in this section 5.07 for any account holders that are intermediaries or flow-through entities and the documentation for any passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person if QI is a reporting Model 1 or reporting Model 2 FFI).

**Sec. 5.08. Documentation for U.S. Exempt Recipients.** QI shall not treat an account holder as a U.S. exempt recipient unless QI obtains from the account holder—

(A) A valid Form W-9 on which the account holder includes an exempt payee code to certify that the account holder is a U.S. exempt recipient for purposes of chapter 4 reporting;

(B) Documentary evidence that is sufficient to establish that the account holder is a U.S. exempt recipient; or

(C) Documentary evidence that is sufficient to establish the account holder's status as a U.S. person and QI can treat the person as an exempt recipient under the rules of §§1.6045-2(b)(2)(i) or 1.6049-4(c)(1)(ii), as appropriate, without obtaining documentation.

**Sec. 5.09. Documentation for U.S. Non-Exempt Recipients.** QI shall not treat an account holder as a U.S. non-exempt recipient unless QI obtains a valid Form W-9 or other similar agreed form under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI from the account holder, QI knows an account holder is a U.S. non-exempt recipient, or QI must presume a person is a U.S. non-exempt recipient to the extent required under section 5.13(C) (3) or (4) of this Agreement.

**Sec. 5.10. Documentation Validity.**

(A) **In General.** QI may not rely on documentation if QI has actual knowledge or, for a payment other than an amount realized, reason to know that the information or certifications contained in the documentation or account information are unreliable or incorrect, or if there is a change in circumstances with respect to the information or statements contained in the documentation or account information that affects the reliability of the account holder's claim. See §§1.1441-1(e)(4) (viii), 1.1441-6(b)(1)(ii), and 1.1441-7(b) (2) for general rules for reliance on documentation for purposes of chapter 3, section 1446(a) (including for a claim of treaty benefits), and §1.1446(f)-4(b) for reliance on documentation for purposes of section 1446(f). For purposes of chapter 3, also see §1.1441-7(b)(4) for general rules applicable to withholding certificates, §1.1441-7(b)(7) for general rules

applicable to documentary evidence, and §1.1441-7(b)(8)(i) for rules regarding documentary evidence received before January 1, 2001. See section 5.10(B) of this Agreement for limitations that apply to certain QIs for when they are considered to have reason to know that documentation is unreliable or incorrect for chapter 3 purposes and section 5.10(C) of this Agreement for when QI may rely on documentation notwithstanding the preceding requirements of this section 5.10(A). See §31.3406(h)-3(e) for rules regarding when QI may rely on a Form W-9.

A change in circumstances affecting withholding information, including allocation information or withholding rate pools contained in a withholding statement, will also cause the documentation provided with respect to that information to no longer be reliable. See §1.1441-1(e) (4)(ii)(D) for the definition of change in circumstances and a withholding agent's obligation with respect to a change in circumstances for purposes of chapter 3.

In addition to the above requirements for reliance on documentation, QI may not rely on a permanent residence address provided by an account holder that is subject to a hold mail instruction except as provided in section 5.10(D) of this Agreement. See §1.1441-1(c)(38)(i) for the definition of permanent residence address and §1.1441-1(c)(38)(ii) for the definition of a hold mail instruction. See §1.1441-7(b) (8)(ii) for the requirement that documentary evidence received after December 31, 2001, may not be treated as valid if a withholding agent does not have a permanent residence address for the account holder.

If QI becomes aware of information resulting in the documentation no longer being reliable or correct and QI has not assumed primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility, QI agrees that it will promptly provide a withholding agent with corrected information (e.g., corrected withholding rate pools, corrected Forms W-9, or corrected U.S. TINs) within 30 days after QI knows or has reason to know that the documentation upon which it has relied is unreliable or incorrect. If QI receives notification from the IRS that documentation provided by an account holder is unreliable or incorrect (e.g.,

that the U.S. TIN provided by an account holder is incorrect), QI shall follow the procedures set forth in §31.3406(d)-5. See also QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI or an NFFE's requirements as a withholding agent under sections 1471 and 1472 following a change in circumstances

**(B) Limits on Reason to Know.**

(1) **Direct Account Holders.** If QI is a financial institution as defined in §1.1471-5(e), an insurance company (without regard to whether such company is a specified insurance company), or a broker or dealer in securities, QI shall be considered to have reason to know that documentation provided by a direct account holder is unreliable or incorrect with respect to the account holder's claim of foreign status for purposes of chapter 3 or 4 only as prescribed in §1.1441-7(b)(5) or (8), without regard, however, to §1.1441-7(b)(5) (i) and §1.1441-7(b)(8)(ii), with respect to the conditions for when documentation is considered to be unreliable or incorrect based on QI having a U.S. mailing address or U.S. residence address in its account information. In place of those conditions in §1.1441-7(b)(5)(i) and §1.1441-7(b)(8) (ii), QI is required to treat documentation as unreliable or incorrect only if QI has a U.S. mailing address or U.S. residence address for the account holder.

A QI that is an entity described in the first sentence of this section 5.10(B) (1) shall be considered to have reason to know that documentation provided by a direct account holder is unreliable or incorrect with respect to the account holder's residence for purposes of a claim of treaty benefits for chapter 3 and 4 only as prescribed in §1.1441-7(b)(6) and (9) (including when QI does not have a permanent residence address for an account holder in the jurisdiction for which treaty benefits are claimed). For a direct account holder that QI documented before January 1, 2018, however, a QI is not required to treat an account holder's claim of treaty benefits as unreliable or incorrect solely because QI does not have an address for the account holder in the jurisdiction for which the treaty benefits are claimed provided that QI does not have an address for the account holder outside of the

jurisdiction for which the treaty benefits are claimed (or QI otherwise satisfies the validity requirements for relying on the documentation for such a case).

**(2) Indirect Account Holders.** QI shall be considered to have reason to know that relevant information or statements contained in documentation provided by an indirect account holder are unreliable or incorrect if a reasonably prudent person in the position of a QI would question the claims made. QI shall have reason to know that documentation provided by a nonqualified intermediary or a flow-through entity is unreliable or incorrect if the nonqualified intermediary or flow-through entity does not provide QI with, to the extent required, the names of the indirect account holders, their addresses, allocation information allocating payments to each indirect account holder, and sufficient information for QI to report payments on Forms 1042-S and 1099. In addition, QI shall have reason to know that an indirect account holder is not entitled to a reduced rate of withholding under an income tax treaty if the nonqualified intermediary or flow-through entity has not provided sufficient information so that QI can verify that the indirect account holder has provided a U.S. TIN or foreign TIN, if required, and made the necessary statements regarding limitations on benefits provisions and deriving the income under section 894 and the regulations thereunder. See §1.1441-7(b)(10) and section 5.03 of this Agreement.

**(3) Limitation on Benefits Provisions (Entity Account Holders).** With respect to a specific limitation on benefits provision cited by an entity for purposes of a claim of treaty benefits (including when identified on a treaty statement under section 5.03(B) of this Agreement), QI may rely on the provision cited absent actual knowledge that it is unreliable or incorrect.

**(C) Curative Rules for Reliance on Documentation.** If under section 5.10(A) of this Agreement QI knows, or has reason to know, that documentation provided by an account holder is unreliable or incorrect to establish the account holder's foreign status for purposes of chapter 3 (including on account of a change in circumstances), QI may rely (or continue to rely) on the documentation when it obtains

the additional documentation described in §1.1441-7(b)(5) or (b)(8) (as applicable depending on whether a Form W-8 or documentary evidence was collected from the account holder). If under section 5.10(A) of this Agreement QI knows, or has reason to know, that documentation provided by an account holder is unreliable or incorrect to establish the account holder's residence for purposes of claiming benefits under an applicable income tax treaty for purposes of chapter 3 (including on account of a change in circumstances), QI may rely (or continue to rely) on the documentation when it obtains the additional documentation described in §1.1441-7(b)(6) or (b)(9) (as applicable depending on whether a Form W-8 or documentary evidence was collected from the account holder). For a payment subject to withholding under section 1446(a), QI must obtain a valid Form W-8 for the account holder once it knows or has reason to know that the documentation provided is unreliable or incorrect (including on account of a change in circumstances).

**(D) Curative Documentation for Hold Mail Instruction.** QI may rely on a permanent residence address subject to a hold mail instruction as an account holder's permanent residence address when the account holder provides the documentary evidence described in §1.1471-3(c)(5)(i) (without regard to the requirement in §1.1471-3(c)(5)(i) that the documentary evidence contain a permanent residence address). The documentary evidence must support the account holder's claim of foreign status, or in the case of an account holder claiming treaty benefits, the account holder's residence in the country where the account holder is claiming a reduced rate of withholding under an income tax treaty.

If, after documentation is provided, an account holder's permanent residence address is subsequently subject to a hold mail instruction, the addition of the hold mail instruction is a change in circumstances under section 5.10(A) of this Agreement requiring an account holder to provide the documentary evidence described in this section 5.10(D) in order for QI to continue to rely on the permanent residence address.

**Sec. 5.11. Documentation Validity Period.**

**(A) Documentation Other than Form W-9.** QI may rely on valid documentary evidence obtained from account holders in accordance with applicable know-your-customer rules as long as the documentary evidence remains valid under those rules or until QI knows, or has reason to know, that the information contained in the documentary evidence is incorrect. However, for purposes of a claim of treaty benefits, QI may only rely on documentary evidence provided pursuant to §1.1441-6(c)(3) or (4) (i.e., not provided under applicable know-your-customer rules), and statements regarding entitlement to treaty benefits described in §1.1441-6(c)(5)(i) or section 5.03(B) of this Agreement until their validity expires under §1.1441-1(e)(4)(ii)(A)(2). For establishing an account holder's chapter 3 status (as defined in §1.1441-1(c)(45)) or foreign status for chapter 61 purposes, QI may rely on a Form W-8 until its validity expires under §1.1441-1(e)(4)(ii) and may rely on documentary evidence (other than documentary evidence obtained pursuant to applicable know-your-customer rules) until its validity expires under §1.6049-5(c). The validity periods referenced in the preceding sentence also apply for purposes of sections 1446(a) and (f).

**(B) Form W-9.** QI may rely on a valid Form W-9 as long as it has not been informed by the IRS or another withholding agent that the form is unreliable or incorrect. If QI has primary Form 1099 reporting and backup withholding responsibility, it may rely on a Form W-9 unless one of the conditions of §31.3406(h)-3(e)(2)(i) through (v) applies.

**Sec. 5.12. Maintenance and Retention of Documentation.**

**(A) Maintaining Documentation.** QI shall maintain documentation by retaining the original documentation, a certified copy, a photocopy, a scanned copy, a microfiche, or other means that allow reproduction (provided that the QI has recorded receipt of the documentation and is able to produce a hard copy). For a direct account, if QI is not required to retain copies of documentary evidence under its know-your-customer rules, QI may instead retain a notation of the type of documentation reviewed, the date the documentation was reviewed, the document's identification number (if any, e.g.,

a passport number), and whether such documentation contained any U.S. indicia. For direct accounts opened before January 1, 2001, if QI was not required under its know-your-customer rules to maintain originals or copies of documentation, QI may rely on its account information if it has complied with all other aspects of its know-your-customer rules regarding establishment of an account holder's identity, it has a record that the documentation required under the know-your-customer rules was actually examined by an employee of QI in accordance with the know-your-customer rules, and it has no information in its possession that would require QI to treat the documentation as invalid.

**(B) Retention Period.** QI shall retain a record of the account holder's documentation obtained under this section 5 for as long as the documentation is relevant to the determination of QI's tax liability or reporting responsibilities under sections 871, 881, 1461, 1474(a), and 3406.

**Sec. 5.13. Application of Presumption Rules.**

**(A) In General.** QI shall apply the presumption rules of section 5.13(C) of this Agreement if QI cannot reliably associate a payment with valid documentation from an account holder. The presumption rules cannot be used to grant a reduced rate of withholding. For example, the portfolio interest exception of sections 871(h) and 881(c) shall not apply to a person that is presumed to be foreign. Further, QI must apply the presumption rules when required and may not rely on its actual knowledge regarding an account holder's chapter 4 status or status as a U.S. or foreign person to apply a reduced rate of withholding. Failure to follow the presumption rules may result in liability for underwithholding, penalties, and interest. Notwithstanding the preceding sentences, QI must rely on its actual knowledge regarding an account holder rather than what is presumed if, based on such knowledge, it should withhold an amount greater than the withholding rate under the presumption rules or it should report on Form 1042-S or Form 1099 an amount that would otherwise not be reported.

**(B) Reliably Associating a Payment with Documentation.** Generally, QI can

reliably associate a payment with documentation if, for that payment, it holds valid documentation from the account holder; it can reliably determine how much of the payment relates to the valid documentation provided by such account holder; and it has no actual knowledge or reason to know that any of the information, certifications, or statements in or associated with the documentation are incorrect. See §1.1441-1(b)(2) (vii) or, for a withholdable payment, §1.1471-3(c) for rules regarding when a payment can be reliably associated with documentation. See also §1.1471-3(e) (4)(vi)(B) for when a QI that is an FFI may rely on documentation and information permitted in an applicable IGA to document an account holder's chapter 4 status. For documentation reliance rules for purposes of sections 1446(a) and (f), see §§1.1446-1(c)(2)(iii) and 1.1446(f)-4(b). Sections 5.13(B)(1) through (7) of this Agreement describe when a payment is reliably associated with documentation if the payment is made to an account holder that is an intermediary or flow-through entity (other than a nonparticipating FFI that is not acting on behalf of exempt beneficial owners or that is paid an amount realized).

**(1) Reliably Associating a Payment with Documentation Provided by a Nonqualified Intermediary or Flow-Through Entity.** Generally, QI can reliably associate a payment with documentation provided by a nonqualified intermediary or flow-through entity if it can reliably associate the payment with a valid Form W-8IMY provided by the nonqualified intermediary or flow-through entity, and it can determine the portion of the payment that relates to valid documentation associated with the Form W-8IMY for an account holder or interest holder of the nonqualified intermediary or flow-through entity that is not itself a nonqualified intermediary or flow-through entity; and the nonqualified intermediary or flow-through entity provides sufficient information for QI to report the payments on Form 1042-S, Form 1099, or Form 8966 if reporting is required.

If the payment is a withholdable payment, the Form W-8IMY must provide the nonqualified intermediary's or

flow-through entity's chapter 4 status to the extent required for chapter 4 purposes. In lieu of the nonqualified intermediary or flow-through entity providing documentation for an account holder that is subject to chapter 4 withholding, QI can reliably associate a withholdable payment with valid documentation associated with the Form W-8IMY from the nonqualified intermediary or flow-through entity if it can determine the portion of the payment allocable to a chapter 4 withholding rate pool (to the extent permissible under §1.1471-3(c)(3)(iii)(B)).

If the payment is a reportable amount, QI can reliably associate such payment with documentation provided by a nonqualified intermediary or a flow-through entity that is a participating FFI or registered deemed-compliant FFI if, in lieu of providing documentation for its account holders that are U.S. persons, such nonqualified intermediary or flow-through entity allocates the payment to a chapter 4 withholding rate pool of U.S. payees and also certifies on a valid Form W-8IMY that it meets the requirements of §1.6049-4(c)(4)(iii) with respect to any account holder of an account it maintains within the meaning of §1.1471-5(d)(5) (*i.e.*, a direct account holder) that receives a payment included in this pool or allocates a payment that is a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders.

Notwithstanding the preceding sentences in this section 5.13(B)(1), to the extent a payment is not subject to reporting on Form 1042-S, Form 1099, or Form 8966, QI can reliably associate the payment with documentation if it can determine the portion of the payment that is allocable to a group of account holders for whom QI holds valid documentation (other than nonqualified intermediaries or flow-through entities) for whom withholding and reporting is not required. For example, QI can treat a payment of short term OID allocable to a group of documented foreign account holders as reliably associated with valid documentation. Further, if the documentation attached to a nonqualified intermediary's or flow-through entity's Form W-8IMY is documentation from another nonqualified intermediary or flow-through entity, then QI must apply the rules of this paragraph

to that other nonqualified intermediary or flow-through entity.

With respect to a payment of an amount realized from the sale of a PTP interest, QI can reliably associate the payment with documentation when QI can reliably associate the payment with a valid Form W-8IMY provided by a flow-through entity except for a trust that is a simple trust (for which a valid Form W-8BEN-E may instead be provided). Additionally, QI can reliably associate the payment with documentation to permit a modified amount realized paid to a foreign partnership to the extent that QI can reliably associate the payment with a valid Form W-8IMY provided by the partnership that includes the certification for a modified amount realized and the partnership provides valid documentation for each partner allocated an amount of gain (if any) arising from the sale. For a payment of an amount realized made to a grantor trust, QI can reliably associate the payment with documentation when it can reliably associate the payment with a valid Form W-8IMY from the trust indicating its status as a foreign grantor trust (or similar document from a U.S. trust) and can determine the percentage of the amount realized that is associated with valid documentation provided by each grantor or owner of the trust.

With respect to QI's payment of an amount realized from the sale of a PTP interest made to a nonqualified intermediary, QI cannot reliably associate the payment with documentation regardless of whether a valid Form W-8IMY is provided by the nonqualified intermediary together with valid documentation for its account holders that QI can associate with the payment. See section 8.02(N) of this Agreement, however, for when a QI may rely on account holder documentation provided by a nonqualified intermediary for purposes of reporting under section 8 of this Agreement.

With respect to a PTP distribution QI pays to a nonqualified intermediary, QI can reliably associate the distribution with documentation when QI can reliably associate the payment with a valid Form W-8IMY provided by the nonqualified intermediary (including its chapter 4 status for an amount of a distribution attributable to a withholdable payment) and can determine the portion of each amount

subject to withholding on the distribution (as determined under section 3.01(C)(2) of this Agreement) that is associated with valid documentation for each partner or beneficial owner with respect to the distribution that is an account holder of the nonqualified intermediary (as applicable, depending on the amount subject to withholding on the distribution and taking into account the preceding paragraph of this section 5.13(B)(1) for an amount realized on the distribution).

With respect to a PTP distribution QI pays to a flow-through entity, QI can reliably associate the distribution with documentation to the extent it reliably associates with documentation each amount subject to withholding on the distribution as follows—

(i) For an amount subject to withholding under section 1446(a), QI can determine the portion of the amount associated with—

(a) A valid Form W-8IMY from a partnership and, for a partnership other than a PTP, when QI can determine the amount associated with valid documentation provided by each of the partners of the partnership;

(b) A valid Form W-8BEN-E or Form W-8IMY from a simple trust; or

(c) A valid Form W-8IMY from a trust that identifies itself as a foreign grantor trust (or similar document from a U.S. grantor trust), when QI can associate the portion of the amount with valid documentation provided by each grantor or owner of the trust.

(ii) For an amount subject to withholding under chapter 3 or 4 that QI can determine is reliably associated with a valid Form W-8IMY provided by the flow-through entity (which includes the entity's chapter 4 status with respect to an amount of a distribution attributable to a withholdable payment) and the portion of the amount associated with valid documentation provided by each interest holder in the flow-through entity other than an intermediary or flow-through entity.

(iii) For an amount realized that QI can determine is reliably associated with valid documentation provided by the

flow-through entity and the portion of the amount associated with an interest holder in the entity to the extent specified in this section 5.13(B)(1) for an amount realized paid to a flow-through entity.

**(2) Reliably Associating a Payment with a Withholding Certificate Provided by Another QI that Does not Assume Primary Chapters 3 and 4 Withholding or Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with documentation provided by another QI that does not assume either primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility if it can reliably associate the payment with a valid Form W-8IMY and, if the form is associated with a withholdable payment, it includes the QI's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates the withholdable payment among the chapter 4 withholding rate pools (to the extent permissible under §1.1471-3(c)(3)(iii)(B)), and with respect to a payment of an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, that allocates such payment among chapter 3 withholding rate pools for foreign account holders as described in section 6.03(C) of this Agreement.

If the payment is a reportable amount, QI can reliably associate the payment with documentation provided by another QI if the withholding statement allocates the payment to withholding rate pools attributable to U.S. non-exempt recipients and the documentation includes a valid Form W-9 for each U.S. non-exempt recipient account holder for which the other QI is required to report on Form 1099 and, if required, backup withhold. QI can also reliably associate a reportable amount with valid documentation provided by another QI that is a participating FFI or registered deemed-compliant FFI if, in lieu of providing documentation for each U.S. non-exempt recipient account holder, the QI allocates the payment to a chapter 4 withholding rate pool of U.S. payees and



provides the applicable certification(s) on a valid Form W-8IMY for allocating the payment to this pool or allocates a payment that is a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders. Notwithstanding the preceding sentences in this section 5.13(B)(2), the presumption rules shall not apply if a payment cannot be allocated to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees to the extent the alternative procedures of section 6.03(D) of this Agreement apply.

**(3) Reliably Associating a Payment with Documentation Provided by a QI that Assumes Primary Chapters 3 and 4 Withholding Responsibility and Does not Assume Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with valid documentation provided by another QI that assumes primary chapters 3 and 4 withholding responsibility, but not primary Form 1099 reporting and backup withholding responsibility, if it can associate the payment with a valid Form W-8IMY from the QI and, if the form is associated with a withholdable payment, it includes the QI's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates a payment that is a withholdable payment or an amount subject to chapter 3 withholding that is not a withholdable payment among a single withholding rate pool for all account holders with respect to which the QI assumes primary chapters 3 and 4 withholding responsibility.

If the payment is a reportable amount, QI can reliably associate the payment with documentation provided by another QI if the withholding statement allocates the payment to withholding rate pools attributable to each U.S. non-exempt recipient, as described in section 6.03(D), and the documentation includes a valid Form W-9 for each U.S. non-exempt recipient account holder for which the other QI is required to report on Form 1099 and, if required, backup withhold. QI can also reliably associate such payment with valid documentation provided by another QI that is a participating FFI or registered deemed-compliant FFI if, in

lieu of providing documentation for each U.S. non-exempt recipient account holder, the QI allocates the payment made to the U.S. non-exempt recipient to a chapter 4 withholding rate pool of U.S. payees and provides the applicable certifications on a valid Form W-8IMY for allocating the payment to this pool or allocates a payment that is a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders. Notwithstanding the preceding sentences in this section 5.13(B)(3), the presumption rules shall not apply if a payment cannot be allocated to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees to the extent the alternative procedures of section 6.03(D) of this Agreement apply.

**(4) Reliably Associating a Payment with Documentation Provided by a QI that Assumes Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with valid documentation provided by another QI that assumes primary Form 1099 reporting and backup withholding responsibility, but not primary chapters 3 and 4 withholding responsibility, to the extent it can associate the payment with a valid Form W-8IMY from the QI that, if the payment is a withholdable payment, includes the QI's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates a payment that is a withholdable payment among chapter 4 withholding rate pools (other than a pool of U.S. payees and to the extent permissible under §1.1471-3(c)(3)(iii)(B)) and, with respect to a payment that is an amount subject to chapter 3 withholding but is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, allocates the payment among chapter 3 withholding rate pools for foreign account holders as described in section 6.03(C) of this Agreement, and identifies the portion of the payment for which QI assumes primary Form 1099 reporting and backup withholding responsibility.

**(5) Reliably Associating a Payment with Documentation Provided by a QI that Assumes Both Primary Chapters 3 and 4 Withholding Responsibility**

**and Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with valid documentation provided by another QI that assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility if QI can associate the payment with a valid Form W-8IMY from the QI that, if the payment is a withholdable payment, includes the QI's chapter 4 status. Additionally, the Form W-8IMY must also designate the accounts for which the other QI is acting as a QI and is assuming primary chapters 3 and 4 withholding and primary Form 1099 reporting and backup withholding responsibility. If the other QI is acting as a QDD, the Form W-8IMY (or withholding statement) must also designate those accounts (1) for which the QDD is receiving payments with respect to potential section 871(m) transactions or underlying securities as a QDD, (2) for which the QDD is receiving payments with respect to potential section 871(m) transactions (and that are not also underlying securities) for which withholding is not required, and (3) for which the QDD is receiving payments with respect to underlying securities for which withholding is required. The QDD's Form W-8IMY must also (1) for calendar years 2023 and 2024, identify the dividends that are received by the QDD that year in its equity derivatives dealer capacity (which may be done by designating one or more accounts, if the only dividends that can be received by those accounts are in the QDD's equity derivatives dealer capacity) and (2) if the QDD is a partnership or branch of a partnership, provide valid documentation or withholding rate pool information with respect to the QDD's partners to the extent required under section 5.07(E) of this Agreement. If the other QI is acting as a QDD, the Form W-8IMY (or withholding statement) must also identify the home office or branch acting as a QDD that is receiving the payment. If the QI receiving a payment assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for substitute interest payments as described in section 3.03(A), the Form W-8IMY must indicate that the QI is assuming primary

withholding responsibility for all such payments.

**(6) Reliably Associating a Payment with Documentation Provided by a QI that Assumes Primary Withholding Responsibility for a PTP Distribution or Amount Realized from the Sale of a PTP Interest.** QI can reliably associate with documentation a payment of a PTP distribution or amount realized from the sale of a PTP interest made to another QI that assumes withholding responsibility for the payment when QI can reliably associate the payment with a valid Form W-8IMY provided by the QI that indicates that the QI assumes primary responsibility for the amount realized or PTP distribution.

**(7) Reliably Associating a Payment with Documentation Provided by a QI that Does not Assume Primary Withholding Responsibility for a PTP Distribution or Amount Realized from the Sale of a PTP Interest.** QI can reliably associate with documentation a payment of an amount realized from the sale of a PTP interest made to a QI that does not assume primary withholding responsibility for the payment when QI reliably associates the payment with a valid Form W-8IMY provided by the other QI and can determine the portion of the payment associated with a valid Form W-9 for a U.S. partner (or a chapter 4 withholding rate pool of U.S. payees when permitted under chapter 4) and, with respect to other partners, either withholding rate pools, as described in section 6.03(C) of this Agreement or, for a disclosing QI, when QI can determine the portion of the payment that is associated with valid documentation for each of the account holders of the disclosing QI not includible in a chapter 4 withholding rate pool of U.S. payees under chapter 4.

QI can reliably associate with documentation a payment of a PTP distribution made to another QI that does not assume primary withholding responsibility for the payment when QI can reliably associate the payment with a valid Form W-8IMY provided by the QI and can determine the portion of the distribution associated with withholding rate pools, as described in section 6.03(C) of this Agreement, or a valid Form W-9 for a U.S. partner, or, for a disclosing QI, when QI can determine the portion of each amount subject to withholding on the distribution that is

associated with valid documentation for each of the account holders of the disclosing QI as described in section 5.07(D) of this Agreement.

**(C) Presumption Rules.** With respect to a withholdable payment made to a foreign entity, if QI is an NFFE, it must follow the presumption rules of §1.1471-3(f) when it cannot reliably associate a withholdable payment with valid documentation.

With respect to a payment that is an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, the presumption rules are the rules under §1.1441-1(b) (3) that a withholding agent must follow to determine the status of a beneficial owner (*i.e.*, as a U.S. person or foreign person and as an individual or entity (and the entity's classification)) when it cannot reliably associate a payment with valid documentation. With respect to a reportable payment (including a withholdable payment made to an entity) that is not an amount subject to chapter 3 withholding, the presumption rules are the rules of §1.6049-5(d) that a payor must follow to determine the status of a payee (*e.g.*, as a non-exempt recipient) when it cannot reliably associate a payment with valid documentation. The presumption rules are as follows:

**(1) Certain Withholdable Payments Made with Respect to an Offshore Obligation.** A withholdable payment paid outside of the United States as defined under §1.6049-5(e) with respect to an offshore obligation (as defined in §1.1471-1(b)(88)) that is made to an entity is presumed made to a nonparticipating FFI for purposes of chapter 4. A withholdable payment that is not an amount subject to chapter 3 withholding, that is paid outside the U.S. with respect to an offshore obligation, and that is treated as made to a payee that is an individual is presumed made to a U.S. person when the payee has any of the indicia of U.S. status that are described in §1.1441-7(b)(5). If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), see the rules under its FATCA requirements as a participating FFI or registered deemed-compliant FFI for classifying account holders as recalcitrant account holders. If QI is an FFI, see also section 8.06 of this Agreement for

whether QI is required to report such payments on Form 1099.

**(2) Amounts Subject to Withholding under Chapter 3 that are Paid with Respect to an Offshore Obligation.** An amount that is subject to chapter 3 withholding that is not a withholdable payment is presumed made to an undocumented foreign account holder if the payment is made outside of the United States with respect to an offshore obligation. If QI is an NFFE or an FFI that is not required to withhold on recalcitrant account holders pursuant to the terms of an applicable Model 1 or Model 2 IGA, an amount subject to chapter 3 withholding that is a withholdable payment and that is treated as made to a payee that is an individual is also presumed made to an undocumented foreign account holder if the payment is made outside of the United States with respect to an offshore obligation. QI must treat an amount described in this section 5.13(C)(2) as subject to withholding under chapter 3 at a rate of 30 percent on the gross amount of the payment and must report the payment as made to an unknown recipient on Form 1042-S.

**(3) Payments on Certain Short-Term Obligations and Bank Deposit Interest.** An amount of U.S. source original issue discount on the redemption of a short-term obligation or U.S. source bank deposit interest not subject to chapter 4 withholding is presumed made to an undocumented U.S. non-exempt recipient account holder regardless of whether paid to an individual or entity. QI must report an amount described in this section 5.13(C)(3) on Form 1099. QI must backup withhold and report such amounts on Form 1099 unless it provides sufficient information to another payor from which it receives such amounts to backup withhold and report the payments and QI does not know that the other payor has failed to backup withhold or report.

**(4) Foreign Source Income, Broker Proceeds, and Certain Other Amounts Made with Respect to an Offshore Obligation.** A payment of an amount that is not a withholdable payment and is not an amount subject to chapter 3 withholding (other than payments of short-term OID and bank deposit interest described in section 5.13(C) of this Agreement) that is paid outside the United States with respect

to an offshore obligation and that is made to a payee that is an individual is presumed made to a U.S. non-exempt recipient when the payee has any of the indicia of U.S. status that are described in section 5.10(B) of this Agreement. If the payment is made to a payee that is an entity, QI must apply the principles of §1.1441-1(b)(3)(ii), §1.1441-5(d)(2), or §1.1441-5(e)(6) (as applicable) without regard to §1.1441-1(b)(3)(ii)(D) for purposes of this paragraph 5.13(C)(4). For a payment of gross proceeds for which QI is a broker under §1.6045-1, similar rules apply to a payment made with respect to a sale that is effected at an office outside the United States under §1.6045-1(g)(1)(ii). QI must report an amount described in this section 5.13(C)(3) as paid to a presumed U.S. non-exempt recipient on Form 1099 to the extent required under section 8.06 of this Agreement. Backup withholding shall not be required, however, if the exception provided in §31.3406(g)-1(e) applies.

**(5) Other Payments.** For any payment not covered in sections 5.13(C)(1), (2), (3), or (4) of this Agreement, see the presumption rules provided in §1.1441-1(b)(3) or §1.6049-5(d)(2) (as applicable). In the case of a payment of an amount realized, an account holder that is the partner or a broker receiving the payment shall be presumed a foreign person for which a reduced rate of withholding under section 1446(f) shall not apply. See, however, §1.1446(f)-4(b)(4) in the case of an amount realized for which withholding under section 3406 is required. In the case of an amount subject to withholding under section 1446(a) on a PTP distribution, an account holder that is a partner in the PTP receiving the distribution shall be presumed a foreign person, with the rate of withholding based on the status of the partner (as an individual or corporation) as determined under §1.1446-1(c)(3), or as otherwise determined under §1.1446-4(d)(1)(iii) (when applicable).

## **SECTION 6. QUALIFIED INTERMEDIARY WITHHOLDING CERTIFICATE AND DISCLOSURE OF ACCOUNT HOLDERS TO WITHHOLDING AGENT**

**Sec. 6.01. Qualified Intermediary Withholding Certificate.** QI agrees to

furnish a qualified intermediary withholding certificate to each withholding agent from which it receives a reportable amount as a QI or to each withholding agent or broker from which QI receives a PTP distribution or amount realized from the sale of a PTP interest (including when QI acts as a disclosing QI for the distribution or amount realized). The qualified intermediary withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that QI is acting as a QI, contains QI's QI-EIN, and provides all other information required by the form. If QI receives a withholdable payment (including on a PTP distribution), QI must certify to its chapter 4 status and provide its GIIN (if applicable). QI must also certify its chapter 4 status as a participating FFI or registered deemed-compliant FFI when QI provides a Form W-8IMY that certifies that it meets the requirements of §1.6049-4(c)(4)(iii) with respect to any account holder of an account it maintains that is included in a chapter 4 withholding rate pool of U.S. payees on QI's withholding statement for a payment subject to withholding under chapter 3 or 4 or an amount realized from the sale of a PTP interest.

If QI is acting as a QSL for a substitute dividend payment, QI must also certify that it is acting as a qualified securities lender and provide all other information required by Form W-8IMY.

If QI is acting as a QDD for payments with respect to potential section 871(m) transactions or underlying securities, it must certify that it is acting as a QDD for those payments and assumes primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for any payments with respect to potential section 871(m) transactions that it makes as required by this Agreement, and it must provide all other information required by Form W-8IMY with respect to the certification.

If QI is acting with respect to payments of substitute interest as described in section 3.03(A) of this Agreement, it must certify that it is assuming primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for all such payments, in addition to the

other certifications it makes and information it provides as a QI as required by this Agreement.

Except as otherwise provided in section 6.02 of this Agreement, QI also agrees to furnish each withholding agent to whom it provides a Form W-8IMY with the withholding statement described in section 6.02 of this Agreement. QI is not required to disclose, as part of its Form W-8IMY or its withholding statement, any information regarding the identity of a direct or indirect account holder that is a foreign person or a U.S. exempt recipient or a holder of a U.S. account except when acting as a disclosing QI. To the extent QI does not assume primary Form 1099 reporting and backup withholding responsibility under section 3.04 of this Agreement or is not excepted from reporting under section 8.06 of this Agreement, for each U.S. non-exempt recipient account holder on whose behalf QI receives a reportable amount, QI must provide to a withholding agent the Form W-9, or if any such account holder has not provided a Form W-9, the name, address, and U.S. TIN (if available).

### **Sec. 6.02. Withholding Statement.**

**(A) In General.** QI agrees to provide to each withholding agent from which QI receives reportable amounts as a QI a withholding statement described in this section 6.02 and §1.1441-1(e)(3)(iv). A withholding statement shall not be provided to a withholding agent if QI assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for all of its accounts for which QI receives reportable amounts as a QI, unless QI is acting as a QDD. The withholding statement forms an integral part of the Form W-8IMY. The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 4, and 61 and section 3406. For a payment received by QI of a PTP distribution or an amount realized from the sale of a PTP interest, QI agrees to provide a withholding statement described in this section 6.02 unless QI assumes primary withholding responsibility for the payment.

**(B) Content of Withholding Statement.** The withholding statement must contain sufficient information for a

withholding agent to apply the correct rate of withholding on payments allocable to the accounts identified on the statement and to properly report such payments on Forms 1042-S and Forms 1099, as applicable. The withholding statement must—

(1) Designate those accounts for which QI acts as a QI;

(2) Designate those accounts for which QI assumes primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility (including accounts for which QI is acting with respect to payments of U.S. source substitute interest (as described in section 3.03(A) of this Agreement));

(3) If QI is acting as a QDD, designate the accounts (1) for which the QDD is receiving payments with respect to potential section 871(m) transactions or underlying securities as a QDD, (2) for which the QDD is receiving payments with respect to potential section 871(m) transactions (and that are not underlying securities) for which withholding is not required, and (3) for which QDD is receiving payments with respect to underlying securities for which withholding is required, and, if applicable, identifying the home office or branch that is treated as the owner for U.S. income tax purposes. In addition, for calendar years 2023 and 2024, the withholding statement must identify the dividends that it receives in its equity derivatives dealer capacity (which may be done by designating one or more accounts, if the only dividends that can be received by those accounts are in the QDD's equity derivatives dealer capacity). Also, for a QDD that is a partnership or a branch of a partnership, the withholding statement must, for a payment of an amount under section 3.09 of this Agreement (as modified for a QDD that is a partnership or branch of a partnership), include withholding rate pool information to the extent permitted in section 6.03 of this Agreement for an account holder, or specific partner information, with respect to its partners receiving the amount (looking through partners that are foreign flow-through entities). The requirement to include the partner information specified in the preceding sentence does not apply to a payment described in sections 3.03(A)(1)-(3) of this Agreement.

(4) If applicable, designate the accounts for which QI is acting as a QSL with respect to any U.S. source substitute dividend payments received from the withholding agent;

(5) Designate those accounts for which QI assumes primary withholding responsibility for a payment of a PTP distribution or an amount realized from the sale of a PTP interest; and

(6) Provide information regarding withholding rate pools, as described in section 6.03 of this Agreement, when necessary, except that section 6.03(C) of this Agreement shall not apply when QI acts as a disclosing QI for a payment (including for an amount subject to chapter 3 or 4 withholding on a PTP distribution), and references to a chapter 4 withholding rate pool of U.S. payees in section 6.03(B) of this Agreement shall not apply to an amount subject to withholding under section 1446(a) on a PTP distribution. See also section 2.91(E) of this Agreement for a disclosing QI's requirement to provide specific payee information on a withholding statement for a PTP distribution or amount realized from the sale of a PTP interest.

#### **Sec. 6.03. Chapters 3 and 4 Withholding Rate Pools.**

(A) **In General.** QI shall provide as part of its withholding statement withholding rate pool information in a manner sufficient for the withholding agent to meet its chapters 3 and 4 and backup withholding responsibilities and its Form 1042-S and Form 1099 reporting responsibilities. QI's requirement for its withholding statement described in the preceding sentence also applies to a withholding statement QI provides to the withholding agent or broker for a payment of a PTP distribution or amount realized from the sale of a PTP interest. Additionally, for a PTP distribution, the withholding rate pool information provided by QI on its withholding statement must take into account each amount subject to withholding on the distribution as determined by the withholding agent that pays the distribution to QI.

(B) **Chapter 4 Withholding Rate Pools.** If QI receives a withholdable payment on behalf of its account holders, QI may allocate the payment to a chapter 4 withholding rate pool. A chapter 4

withholding rate pool is a payment of a single type of income (*e.g.*, interest or dividends) that is allocated to payees that are nonparticipating FFIs. If QI is a participating FFI or registered deemed-compliant FFI (other than reporting Model 1 FFI), it may also allocate a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders (if applicable). If QI is a participating FFI or registered deemed-compliant FFI receiving a reportable amount that is excepted from reporting under section 8.06(A) of this Agreement (excluding sections 8.06(A)(2) and (A)(3) of this Agreement when the payment is subject to chapter 4 withholding and section 8.06(A)(4) of this Agreement), QI may allocate the payment to a chapter 4 withholding rate pool of U.S. payees. See section 6.03(D) of this Agreement for the alternative procedures that may be used in this case. Except as otherwise provided in this section 6.03(B), if QI receives a withholdable payment, QI must provide the information required under §1.1471-3(c)(3)(iii)(B)(2).

Further, if QI elects under its FATCA requirements as a participating FFI or registered deemed-compliant FFI to backup withhold instead of withholding under chapter 4 with respect to certain recalcitrant account holders, QI's withholding statement must indicate the portion of such payment subject to backup withholding under section 3406 that is allocated to such account holders and must provide all other information relating to such account holders that is required under chapter 61 for the withholding agent to report with respect to the payment.

If QI has an account holder that is another intermediary (whether a QI, NQI, or PAI) or a flow-through entity, QI may combine the account holder information provided by the intermediary or flow-through entity with QI's direct account holder information to determine the amounts allocable to each of QI's chapter 4 withholding rate pools described in this section 6.03(B). If QI is an NFFE that has an account holder that is another intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI, QI may provide the account holder's chapter 4 withholding rate pools of recalcitrant account holders and U.S. payees to the extent applicable.

**(C) Chapter 3 Withholding Rate Pools.** With respect to any portion of the payment that is attributable to payees for which no chapter 4 withholding is required, a chapter 3 withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S, that is subject to a single rate of withholding (e.g., 0%, 10%, 15%, 30%, or 37%) and a single chapter 4 exemption code. QI shall determine chapter 3 withholding rate pools based on valid documentation obtained under section 5 of this Agreement or, if a payment cannot be reliably associated with valid documentation, on the presumption rules of section 5.13(C) of this Agreement. If QI has an account holder that is another intermediary (whether a QI, NQI, or PAI) or a flow-through entity (other than a nonparticipating FFI that is not acting on behalf of any exempt beneficial owners), QI may combine the account holder information provided by the intermediary or flow-through entity with QI's direct account holder information to determine the amounts allocable to each of QI's chapter 3 withholding rate pools with respect to the portion of the payment allocable to an account holder to which chapter 4 withholding does not apply. For a payment of an amount realized, however, QI may combine its account holder information with the account holder information provided by an intermediary only if the intermediary is a QI other than a disclosing QI.

**(D) U.S. Non-Exempt Recipients Subject to Backup Withholding or Form 1099 Reporting and Alternative Procedures for Allocating Payments on Withholding Statements.** To the extent QI does not assume primary Form 1099 reporting and backup withholding responsibility and is not excepted from reporting on Form 1099 under section 8.04 of this Agreement, QI's withholding statement must establish a separate withholding rate pool for each U.S. non-exempt recipient account holder that QI is required to report on Form 1099 and has disclosed to the withholding agent. QI may, by mutual agreement with the withholding agent, establish a single withholding rate pool (not subject to backup withholding) for all U.S. non-exempt recipient account holders for whom QI is required to report on

Form 1099 and has provided Forms W-9 before the withholding agent paying any reportable amounts or, if applicable, designated broker proceeds to which backup withholding does not apply. QI must establish a separate withholding rate pool for all U.S. non-exempt recipient account holders subject to backup withholding before the withholding agent paying any reportable amounts or, if applicable, designated broker proceeds.

Alternatively, QI may include U.S. non-exempt recipients in a zero-rate withholding pool that includes U.S. exempt recipients and foreign persons for which no withholding is required under chapters 3 and 4 and section 3406 and may include payments allocated to a chapter 4 withholding rate pool of U.S. payees in this pool to the extent permitted to be provided by QI under section 6.03(B) of this Agreement. If QI chooses the alternative procedure of this paragraph, QI must provide sufficient information to the withholding agent no later than January 15 of the year following the year in which the reportable amounts and designated broker proceeds, if applicable, are paid in order to allocate to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees (when applicable). Failure to provide such information will result in the application of penalties to QI under sections 6721 and 6722 and shall constitute an event of default under section 11.06 of this Agreement.

## SECTION 7. TAX RETURN OBLIGATIONS

### Sec. 7.01. Form 1042 (or Other Tax Return) Filing Requirement.

**(A) In General.** QI shall file a return on Form 1042, whether or not QI withheld any amounts under chapter 3 or 4, on or before March 15 of the year following any calendar year in which QI acts as a QI and makes a payment of an amount subject to chapter 3 or 4 withholding. A separate Form 1042 must be filed by each legal entity that is a QI covered by this Agreement in accordance with the instructions to Form 1042 (including to the extent of any requirement to reconcile amounts reported on Form 1042 with amounts reported on Forms 1042-S). Form 1042 shall be filed at the address indicated on the form, at the

address at which the IRS notifies QI to file the return, or in accordance with the instructions to file Form 1042 electronically. In addition to the information specifically requested on Form 1042 and the accompanying instructions, if QI made any overwithholding or underwithholding adjustments under §§1.1461-2 and 1.1474-2 and sections 9.02 and 9.05 of this Agreement, QI must attach a statement setting forth the amounts of any overwithholding or underwithholding adjustments and an explanation of the circumstances that resulted in the overwithholding or underwithholding.

**(B) Extensions for Filing Returns.** QI may request an extension of the time for filing Form 1042, or any of the information required to be attached to the form, by submitting Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, on or before the due date of the return.

**(C) QDD Tax Liability Requirements for QDDs.** In addition to its requirements under section 7.01(A) of this Agreement, a QI that is acting as a QDD also must report its QDD tax liability on the appropriate U.S. tax return (in the manner prescribed by the IRS), including separately identifying each part of the QDD tax liability described in section 3.09(A) through (C) of this Agreement separately for the home office and each branch that is acting as a QDD (if applicable), and in the case of a QDD that is a partnership or branch of a partnership, taking into account the modifications in section 3.09 and separately stating the withholding associated with any of the QDD tax liability amounts). For QDDs that are foreign corporations or branches of foreign corporations, the appropriate U.S. tax return is a Form 1120-F, including all required Schedules Q. For QDDs that are partnerships or branches of partnerships, the appropriate U.S. tax return is a Form 1065, including all required attachments and schedules, and to the extent any amount is subject to withholding with respect to a foreign partner of the QDD, Forms 1042 and 1042-S. In addition, if the QDD is a partnership or a branch of a partnership, the partnership must attach a statement to its Form 1065 for each QDD and, if the QDD has a fiscal year rather than a calendar year, a separate

statement for each QDD for each portion of the fiscal year that falls within the calendar year that includes the information that would have been included on the Form 1120-F Schedule Q, in the manner specified in the instructions to the Form 1065. A QDD must also report any other information required by the appropriate return with respect to its QDD tax liability (including any part thereof). In each case, the form will be filed by the QI on behalf of its QDD(s) and the Form 1120-F or Form 1065, as applicable, must be filed whether or not the QI would be required to file the form if it were not a QDD. U.S. financial institutions with a foreign branch that acts as a QDD must file the appropriate U.S. income tax return (e.g., Form 1120, U.S. Corporation Income Tax Return) for the tax year covered by this Agreement to report and pay its tax liability under chapter 1 and will not have a separate QDD tax liability. Similarly, any United States person that is an individual or a corporation and a direct or indirect partner of a QI partnership that is or has a QDD must report and pay its tax liability under chapter 1 and would not have a separate QDD tax liability for the amounts from the QDD.

A QDD must also maintain, and make available to the IRS upon request, a reconciliation schedule that tracks across calendar years the section 871(m) amount for each dividend with respect to each underlying security referenced by a potential section 871(m) transaction separately for the home office and each branch that is a QDD (if applicable). The reconciliation schedule must separately state total amounts received as a QDD, as well as the dividends received in its equity derivatives dealer capacity and the section 881 tax paid on those amounts (or in the case of a QI that is a partnership, the withholding by the partnership on its partners for those amounts and the reporting of the amounts to its partners), the amount of dividends that were effectively connected with the conduct of a trade or business in the United States, the amount of stock owned in its equity derivatives dealer capacity that was not effectively connected with the conduct of a trade or business in the United States, the amount of dividend equivalent payments it received in its equity derivatives dealer capacity,

its long positions, its short positions, its net delta for business purposes (if any), its adjustments to the net delta used for business purposes (if any, such as adjustments to exclude transactions that, for federal income tax purposes, are not treated as transactions of a QDD, do not exist, or that are effectively connected with the conduct of a trade or business in the United States), the dividend amount per share, its tax liability under section 881 (or if QI is a partnership, the withholding by the partnership on its partners and the reporting of the amounts to its partners) for its section 871(m) amount, its net delta exposure, and the section 871(m) amount for each dividend with respect to each underlying security referenced by a potential section 871(m) transaction it received as a QDD, and any adjustments thereto, for transactions in its equity derivatives dealer capacity. The reconciliation schedule may be maintained in any manner or format that permits the IRS to reconcile the amount reported by the QDD for the calendar year.

**Sec. 7.02. Form 945 Filing Requirement.** QI shall file a return on Form 945 on or before January 31 following the calendar year in which QI backup withheld an amount under section 3406. Separate Forms 945 must be filed by each legal entity that is a QI covered by this Agreement. The form must be filed at the address specified in the instructions for Form 945, at the address at which the IRS notifies QI to file the return under the provisions of section 12.06 of this Agreement, or in accordance with the instructions to file Form 945 electronically.

**Sec. 7.03. Retention of Returns.** QI shall retain Forms 945 and 1042 (including, with respect to a QI acting as a QDD, its reconciliation schedule) for the applicable statute of limitations on assessment under section 6501.

## SECTION 8. INFORMATION REPORTING OBLIGATIONS

**Sec. 8.01. Form 1042-S Reporting.** Except as otherwise provided in section 8.02 of this Agreement, QI is not required to file Forms 1042-S for amounts paid to each separate account holder for whom such reporting would otherwise be required. Instead, QI shall file a Form

1042-S reporting the pools of income (reporting pools) as determined in section 8.03 of this Agreement. QI must file its Forms 1042-S in the manner required by the regulations under chapters 3 and 4 (or in the case of a participating FFI, in the manner required under the FFI Agreement) and the instructions to the form, including any requirement to file the forms magnetically or electronically. Separate Forms 1042-S must be filed by each legal entity that is a QI covered by this Agreement. A QI acting as a QDD that also has QI activities must file separate Forms 1042-S in its QDD capacity and its QI capacity (*i.e.*, other than when acting as a QDD). Each QI covered by this Agreement may also allow its individual branches not acting as QDDs to file Forms 1042-S provided that all Forms 1042-S contain the QI-EIN of the legal entity of which the branch forms a part and, to the extent required for chapter 4 purposes, the GIIN of the branch. If QI is acting as a QDD, the home office and each branch acting as a QDD must file separate Forms 1042-S for payments made as a QDD. Any Form 1042-S required by this section 8 shall be filed on or before March 15 following the calendar year in which the payment reported on the form was made. QI may request an extension of time to file Forms 1042-S by submitting Form 8809, *Application for Extension of Time to File Information Returns*, by the due date of Forms 1042-S in the manner required by (and to the extent permitted on) Form 8809. For when a payment is subject to reporting on Form 1042-S, see generally §1.1461-1(c)(2). For when an amount realized from a transfer of a PTP interest under section 1446(f) or an amount subject to withholding under section 1446(a) on a PTP distribution is subject to reporting on Form 1042-S, see section 2.91(B) of this Agreement and §1.1461-1(c)(2)(i) (P).

**Sec. 8.02. Recipient Specific Reporting.** QI (whether or not it assumes primary withholding responsibility under section 3.03 of this Agreement) is required to file separate Forms 1042-S for amounts paid to each separate account holder as described in this section 8.02. QI must file separate Forms 1042-S by income code, exemption code, recipient code, chapter 3 or 4 withholding rate pool, and withholding

rate. In the case of a payment to a QDD, separate Forms 1042-S must be filed for each QDD, even if a single legal entity. For when a Form 1042-S is issued to an account holder that is a U.S. person to report withholding under section 1446(a) or (f), see the instructions for Form 1042-S. In addition, in the case of a QDD that is a partnership or a branch of a partnership, separate Forms 1042-S must be filed for each of the QDD's foreign partners with respect to each partner's share of the QDD's QDD tax liability subject to withholding under section 3.09 of this Agreement, as modified for a QDD that is a partnership or branch of a partnership.

**(A)** QI must file a separate Form 1042-S for each account holder that is a QI (to the extent such payment is required to be reported under §1.1461-1) WP, WT, or QSL that receives from QI an amount subject to withholding under chapter 3 or 4 (or, in the case of a QSL, that receives a U.S. source substitute dividend payment), regardless of whether such account holder is a direct or indirect account holder of QI.

**(B)** QI must file a separate Form 1042-S for each account holder that is a nonqualified intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and that receives an amount subject to chapter 4 withholding from QI that is allocable to each of such FFI's chapter 4 withholding rate pools of recalcitrant account holders, nonparticipating FFIs, and pool of U.S. payees, if applicable, regardless of whether such FFI is a direct or indirect account holder of QI.

**(C)** QI must file a separate Form 1042-S for each account holder that is a nonqualified intermediary or flow-through entity that is not described in section 8.02(B) of this Agreement (other than a nonparticipating FFI) that receives from QI an amount subject to chapter 4 withholding allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs, regardless of whether such intermediary or flow-through entity is a direct or indirect account holder of QI.

**(D)** QI must file a separate Form 1042-S for each account holder of QI that is a PAI or a partnership or trust to which QI applies the agency option that receives from QI an amount subject to chapter 4

withholding allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs or an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required and that is allocable to such entity's chapter 3 withholding rate pools.

**(E)** QI must file a separate Form 1042-S for each unknown recipient with respect to an account holder that is a nonqualified intermediary, flow-through entity, or QI that does not assume primary chapters 3 and 4 withholding responsibility and that receives an amount subject to chapter 4 withholding from QI that QI must presume is allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs under the presumption rule of §1.1471-3(f)(5).

**(F)** QI must file a separate Form 1042-S for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is a nonparticipating FFI that is receiving a withholdable payment on behalf of an exempt beneficial owner (regardless of whether the nonqualified intermediary or flow-through entity is a direct or indirect account holder of QI) to the extent QI can reliably associate such amounts with valid documentation from such nonqualified intermediary or flow-through entity as to the payment allocable to one or more exempt beneficial owners. In addition, QI must file separate Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is described in the preceding sentence and that is a direct or indirect account holder (or interest holder) of a PAI of QI or a partnership or trust to which QI applies the agency option.

**(G)** QI must file separate Forms 1042-S for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is receiving an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required to the extent QI can reliably associate such amounts with valid documentation from an account holder that is not itself a nonqualified intermediary or flow-through entity. In addition, QI must file separate

Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is described in the preceding sentence and that is a direct or indirect account holder (or interest holder) of a PAI of QI or a partnership or trust to which QI applies the agency option.

**(H)** QI must file a separate Form 1042-S for each direct account holder that is receiving a withholdable payment and that establishes its status as a passive NFFE but fails to provide the information regarding its owners as required under §1.1471-3(d)(12)(iii) (unless such information was reported by the withholding agent).

**(I)** If QI is acting as a QDD, QI must file a separate Form 1042-S for any amount subject to chapter 3 withholding with respect to a potential section 871(m) transaction made to another QDD.

**(J)** If QI acts as a disclosing QI with respect to a payment of a PTP distribution or an amount subject to reporting under section 1446(f) made to an account holder that is a foreign partner, QI must file a Form 1042-S to report the payment when QI knows or has reason to know that the Form 1042-S has not been filed with respect to the partner or the rate of withholding shown on the Form 1042-S is incorrect. In the case of a PTP distribution that QI must report in accordance with the preceding sentence, QI must file a separate Form 1042-S for each amount associated with the distribution by the PTP to the extent required in the instructions for Form 1042-S. Notwithstanding the preceding provisions of this section 8.02(J), see section 8.02(M) of this Agreement for an amount subject to reporting under section 1446(f) paid to a nonqualified intermediary.

**(K)** If a QI makes a payment of a PTP distribution or an amount subject to reporting under section 1446(f) to an account holder that is a QI not acting as a disclosing QI for the payment, QI must file a Form 1042-S for the other QI. If QI instead receives information on a foreign partner from a QI that is an account holder and that acts as a disclosing QI for a payment referenced in the preceding sentence, QI must file a separate Form 1042-S to report the payment when QI assumes primary withholding responsibility for the

payment or knows or has reason to know that the Form 1042-S has not been issued with respect to the foreign partner. In such a case, QI must file the Form 1042-S reporting the disclosing QI as an intermediary, with the foreign partner reported as the recipient. In the case of a payment of a PTP distribution made to a QI that acts as a disclosing QI for the distribution and that QI is required to report in accordance with this section 8.02(K), QI must file a separate Form 1042-S to the extent required in the instructions to Form 1042-S. For any Form 1042-S QI files with respect to a payment made to an account holder of a disclosing QI, QI must also furnish to the disclosing QI a recipient copy of the Form 1042-S.

(L) If QI receives specific information on a foreign partner that is a direct account holder of a PAI that receives from QI a payment of an amount subject to withholding on a PTP distribution or an amount subject to reporting under section 1446(f), QI must file a separate Form 1042-S to report each amount paid to the partner to the extent required in accordance with section 8.02(K) of this Agreement for a QI that is a disclosing QI (but as applied to a PAI instead of a disclosing QI).

(M) If QI makes a payment of a PTP distribution to a nonqualified intermediary, QI must file a separate Form 1042-S for each foreign partner or beneficial owner of the distribution that is an account holder of the nonqualified intermediary. If QI makes a payment of an amount subject to reporting under section 1446(f) to a nonqualified intermediary, QI shall file the Form 1042-S for an unknown recipient of the nonqualified intermediary, except that QI may instead file the Form 1042-S for an account holder of the nonqualified intermediary receiving the payment when—

(1) QI has in place an agreement with the nonqualified intermediary that QI will report (or ensures that another QI or broker will report) under section 1461 with respect to the amount allocated to each of the transferors of the PTP interest (and, if required, under section 6045) and that QI will provide the nonqualified intermediary a recipient copy of each Form 1042-S issued as a result of QI's reporting;

(2) QI can reliably associate the payment with documentation for each

transferor under section 5.13 of this Agreement;

(3) QI receives from the nonqualified intermediary the statement described in §1.6031(c)-1T(a)(1) with respect to each partner that is an account holder of the nonqualified intermediary for which a statement under section 6031(b) is required to be issued (which meets the requirements in section 8.07 of this Agreement) with respect to the partner's PTP interest for the year in which the payment was made; and

(4) The nonqualified intermediary appoints the QI as its agent for providing the statement to the PTP (or PTP's agent). See §1.6031(c)-1T(f).

(N) QI must file a separate Form 1042-S for a grantor or owner of a grantor trust for purposes of section 1446(a) or (f), except when QI applies the provisions of section 4.06 of this Agreement with respect to the trust.

(O) QI must file a separate Form 1042-S for a foreign partnership holding a PTP interest directly with QI to the extent that QI determines a modified amount realized with respect to the partnership for purposes of section 1446(f), or to the extent the partnership receives a payment subject to withholding under section 1446(a), when the foreign partnership is not a PTP, but excluding either case when QI applies the provisions of section 4.06 of this Agreement with respect to the partnership.

(P) QI must file a separate Form 1042-S with respect to an account holder that requests a Form 1042-S from QI by a written request made within two full calendar years following the year in which QI made the payment for which the Form 1042-S is requested. If, however, QI filed a Form 1042-S to report a payment of an amount subject to withholding under section 1446(a) on a PTP distribution or an amount subject to reporting under section 1446(f) with respect to an account holder for the same calendar year for which the account holder requests a separate Form 1042-S for any payment, QI must file a separate Form 1042-S for each amount reportable on Form 1042-S that was paid to the account holder for the calendar year. A request made in a case described in the preceding sentence must be made in writing within three full calendar years following the year in which QI made the

payment for which the Form 1042-S is requested. Any request by an account holder for a separate Form 1042-S referenced in this section 8.02(P) requires that the account holder provide its U.S. TIN to QI.

### **Sec. 8.03. Reporting Pools for Form 1042-S Reporting.**

(A) **Chapter 4 Reporting Pools.** Except for amounts required to be reported under section 8.02 of this Agreement, if QI is an FFI, QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders of QI. A separate Form 1042-S shall be filed for each type of reporting pool. A chapter 4 reporting pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S, that is allocable to a chapter 4 withholding rate pool consisting of either recalcitrant account holders or payees that are nonparticipating FFIs. QI must report recalcitrant account holders in pools based upon a recalcitrant account holder's particular status described in §1.1471-4(d) (6), with a separate Form 1042-S issued for each such pool.

If QI is an FFI, it may report in a chapter 4 withholding rate pool of U.S. payees an account holder that is (or is presumed) a U.S. person and that QI reports as a U.S. account under its applicable FATCA requirements as a participating FFI or registered deemed-compliant FFI provided that QI is excepted from Form 1099 reporting with respect to the payment under section 8.06(A)(1) of this Agreement or section 8.06(A)(2) and (A)(3) of this Agreement if the payment is excepted from Form 1099 reporting, is not subject to withholding under chapter 4, and is not a PTP distribution.

If QI is an NFFE, QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders that are nonparticipating FFIs in a chapter 4 reporting pool of nonparticipating FFIs.

(B) **Chapter 3 Reporting Pools.** Except for amounts required to be reported under section 8.02 of this Agreement or when QI acts as a disclosing QI for a payment, QI shall report an amount subject to chapter 3 withholding or withholding



under section 1446(a) or (f) for which no chapter 4 withholding is required and that is paid to a foreign account holder by reporting pools on a Form 1042-S if paid to a direct account holder of QI, or to a direct account holder of a PAI of QI or a partnership or trust, to the extent permitted under subsection 4 of this Agreement. A separate Form 1042-S shall be filed for each type of reporting pool. A chapter 3 reporting pool is a payment of a single type of income that falls within a particular withholding rate, chapter 3 exemption code, and, if the payment is a withholdable payment, chapter 4 exemption code as determined on Form 1042-S. QI may use a single chapter 3 pool reporting code (e.g., QI- withholding rate pool- general) for all reporting pools except for amounts paid to foreign tax-exempt recipients, for which a separate chapter 3 pool reporting code (e.g., QI- withholding rate pool-exempt organization) must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to chapter 3 withholding and is not liable to tax in its jurisdiction of residence because it is a charitable organization, a pension fund, or a foreign government.

#### **Sec. 8.04. FATCA U.S. Account Reporting.**

**(A) QI that is an FFI.** If QI is an FFI, QI is required to report each U.S. account (or, in the case of an FFI that is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, each U.S. reportable account) that it maintains and for whom QI is acting consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI), QI must report its U.S. accounts on Form 8966 in the time and manner required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI except to the extent QI is reporting under §1.1471-4(d)(5) on Form 1099 with respect to its U.S. accounts. If QI is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, QI must report each U.S. reportable account on Form 8966 as required under the applicable Model 1 IGA. QI cannot delegate to

its withholding agent its requirements to report U.S. accounts (or U.S. reportable accounts) regardless of whether QI does or does not assume primary Form 1099 reporting and backup withholding responsibility under section 3 of this Agreement. See section 8.06 of this Agreement for when the reporting described in this section 8.04 satisfies QI's Form 1099 reporting responsibilities with respect to reportable payments under chapter 61.

**(B) QI that is an NFFE.** If QI is an NFFE acting as a QI on behalf of persons other than its shareholders, QI shall file Form 8966 to report withholdable payments made to an account holder that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners if the NFFE is the beneficial owner of the withholdable payment received by QI. See §1.1471-1(b)(8) for the definition of beneficial owner. QI must report on Form 8966 in accordance with the form and its accompanying instructions. Such report must include the name of the NFFE that is owned by a substantial U.S. owner; the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments made to the NFFE during the calendar year; and any other information as required by the form and its accompanying instructions. If QI is acting as a sponsoring entity on behalf of an NFFE for chapter 4 purposes, QI is not required to report as described in this paragraph if QI reports the NFFE as part of QI's requirements as a sponsoring entity. See §1.1472-1(c)(5)(ii) for the reporting requirements of a sponsoring entity.

**Sec. 8.05. Form 8966 Reporting for Payees that are NFFEs.** QI shall file Form 8966 to report withholdable payments made to an intermediary or flow-through entity that provides information regarding an account holder (or interest holder) that is an NFFE other than an excepted NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA). QI must report on Form 8966 in the time and manner provided in §1.1474-1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner (or controlling person); the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments made to the

NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions. QI is not required to report, however, to the extent permitted under §1.1474-1(i)(2) on a payment made to a participating FFI or registered deemed-compliant FFI if such information is reported pursuant to section 8.04 of this Agreement or if the intermediary or flow-through entity certifies on its withholding statement that it is reporting the account holder (or interest holder) as a U.S. account pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

**Sec. 8.06. Form 1099 Reporting Responsibility.** QI shall file Forms 1099 and, unless filing magnetically, Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*, for reportable payments made to persons described in this section 8.06. Forms 1099 shall be filed on or before the date prescribed for the particular Form 1099 under chapter 61 and in the manner required by regulations under chapter 61 and the instructions to the forms (including the requirements for filing the forms magnetically or electronically). Extensions of the time to file Forms 1099 may be requested by submitting Form 8809 in the manner required by the form. If QI is required to file Forms 1099, it must file the appropriate form for the type of income paid (e.g., Form 1099-DIV for dividends, Form 1099-INT for interest, Form 1099-B for broker proceeds). QI must file Forms 1099 to report a reportable payment other than in the situations listed in sections 8.06(A) and (B) of this Agreement.

**(A) Reportable Amount.** QI must file a Form 1099 in accordance with the instructions to the form for the aggregate amount of a particular type of reportable amount paid to an account holder that is (or is presumed) a U.S. non-exempt recipient (whether a direct or indirect account holder). However, QI is not required to file a Form 1099 on a reportable amount if—

**(1)** QI is a non-U.S. payor reporting the account holder of a U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI) and

the other conditions of §1.6049-4(c)(4)(i) are satisfied;

(2) QI reports the account holder's account as held by a recalcitrant account holder or, in the case of a QI that is a reporting Model 2 FFI or nonreporting Model 2 FFI treated as registered deemed-compliant, as a non-consenting U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI and the other conditions of §1.6049-4(c)(4)(ii) are satisfied;

(3) QI is a non-U.S. payor that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI and determines that the account has U.S. indicia for which appropriate documentation sufficient to treat the account as held by a specified U.S. person has not been provided and reports the account as a U.S. reportable account and the other conditions of §1.6049-4(c)(4)(ii) are satisfied;

(4) QI has not assumed primary Form 1099 reporting and backup withholding responsibility with respect to the account holder's account and has provided a Form W-9 to a withholding agent or has provided withholding rate pool information with respect to such account holder to a withholding agent to apply backup withholding and QI does not know that the withholding agent has failed to report or backup withhold as required;

(5) With respect to an account holder of an intermediary or flow-through entity (other than a QI) that is a direct or indirect account holder of QI, the intermediary or flow-through entity allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides a Form W-8IMY containing a certification that the entity meets the requirements of §1.6049-4(c)(4)(iii); or

(6) With respect to an account holder of another QI that is a direct or indirect account holder of QI, the QI allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides the applicable certification on a valid Form W-8IMY for allocating the payment to this pool.

**(B) Reportable Payments other than Reportable Amounts.** QI must file a Form 1099 for a reportable payment (other than a reportable amount) paid to each U.S. non-exempt recipient (whether a direct or indirect account holder), or to

any account holder that is presumed to be a U.S. non-exempt recipient under section 5.13(C) of this Agreement. Notwithstanding the previous sentence, QI is not required to file a Form 1099 for a reportable payment (other than a reportable amount) paid to a direct account holder that is (or is presumed) a U.S. non-exempt recipient if—

(1) QI is a non-U.S. payor reporting the account holder of a U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI) and the other conditions of §1.6049-4(c)(4)(i) are satisfied;

(2) QI reports the account holder's account as held by a recalcitrant account holder or, in the case of a QI that is a reporting Model 2 FFI or nonreporting Model 2 FFI treated as registered deemed-compliant, as a non-consenting U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI and the other conditions of §1.6049-4(c)(4)(ii) are satisfied;

(3) QI is a non-U.S. payor that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI and determines that the account has U.S. indicia for which appropriate documentation sufficient to treat the account as held by a specified U.S. person has not been provided and reports the account as a U.S. reportable account and the other conditions of §1.6049-4(c)(4)(ii) are satisfied; or

(4) With respect to a reportable payment that is broker proceeds paid to a U.S. non-exempt recipient, QI has applied the procedures of section 3.05(C) of this Agreement and QI does not know that the other payor has failed to report or backup withhold on the payment as required.

**Sec. 8.07. Section 6031 Reporting Responsibility with respect to Partner Holding PTP Interest.**

**(A) In General.** A QI must comply with the requirements of this section 8.07 for each calendar year for purposes of QI's requirement to report under §1.6031(c)-1T with respect to its account holders. A nominee for purposes of this section 8.07 is an entity (including a broker) that holds a PTP interest directly or indirectly on behalf of another person. An account holder for purposes of this section 8.07

is a partner or intermediary that during a calendar year receives from QI a PTP distribution or sells a PTP interest for which QI pays to it an amount realized and is—

(1) A direct account holder of QI excluding an account holder that is a QI or nonqualified intermediary referenced in section 8.07(A)(2) or (3) of this Agreement;

(2) An account holder of another QI acting as a disclosing QI for a PTP distribution or amount realized (including an account holder of the other QI that is itself a QI but not acting as a disclosing QI); or

(3) An account holder of a nonqualified intermediary when QI either receives the information required for reporting under this section 8.07 with respect to an account holder receiving the distribution or, for the amount realized paid to the account holder, satisfies the conditions of section 8.02(M) of this Agreement (or is otherwise a PAI).

**(B) QI not Acting as Disclosing QI.**

A QI that does not act as a disclosing QI for a PTP distribution or amount realized paid to an account holder for a calendar year with respect to the account holder's PTP interest may provide the statement with respect to the account holder specified in §1.6031(c)-1T(a) to the PTP in which the interest is held (or PTP's agent), in the time specified in §1.6031(c)-1T(b). For purposes of this section 8.07(B), the statement specified in §1.6031(c)-1T(a) must include a U.S. TIN for a foreign account holder only when provided by the account holder to QI. If QI does not provide the statement described in the two preceding sentences, QI must issue to each account holder receiving the distribution or amount realized the statement that is described in §1.6031(c)-1T(h) for the calendar year with respect to the PTP interest for which the distribution or amount realized was paid, in the time specified in §1.6031(c)-1T(h). For purposes of this section 8.07(B), the statement described in §1.6031(c)-1T(h) may be a copy of the statement issued under section 6031(b) to QI for the year when QI includes with the statement an accurate designation of the percentage of each amount shown on the statement attributable to the account holder's PTP interest held with QI. In a case in which QI provides to an account holder the statement

described in §1.6031(c)-1T(h) or the preceding sentence, QI is also required to request from the PTP the PTP's deemed sale information for purposes of §1.864(c)(8)-2(b)(2) with respect to an account holder requesting (directly or through another intermediary) this information from QI (which, in turn, QI must provide to the account holder).

**(C) QI Acting as Disclosing QI.** A QI that acts as a disclosing QI for a PTP distribution or amount realized paid to an account holder for a calendar year with respect to the account holder's PTP interest is required to provide the statement with respect to the account holder specified in §1.6031(c)-1T(a) (including with a U.S. TIN only when required under section 8.07(B) of this Agreement) to the PTP in which the interest is held (or PTP's agent), or QI's nominee for the payment, in the time specified in §1.6031(c)-1T(b). A QI need not provide the statement described in the preceding sentence to the extent that QI's nominee maintains a fully segregated and disclosed account for which QI has already provided the information required for the statement (including a U.S. TIN only when required under section 8.07(B) of this Agreement). Additionally, in a case in which QI provides the statement to QI's nominee or the information referenced in the preceding sentence to its nominee, QI must obtain from the nominee a written representation that the nominee is acting as an agent of the PTP for purposes of §1.6031(c)-1T(a) unless QI otherwise appoints the nominee as its agent for purposes of §1.6031(c)-1T(a). See §1.6031(c)-1T(f).

## **SECTION 9. ADJUSTMENTS FOR OVER AND UNDER-WITHHOLDING; REFUNDS**

**Sec. 9.01. Adjustments for Overwithholding by Withholding Agent When QI Does not Assume Primary Withholding Responsibility.** QI may request that a withholding agent make an adjustment for amounts paid to QI when the withholding agent has overwithheld under chapter 3 or 4 by applying either the reimbursement procedure described in section 9.01(A) of this Agreement or the set-off procedure described in section 9.01(B) of this Agreement within the time period prescribed for those procedures. Nothing in this section shall be interpreted to

require a withholding agent to apply the reimbursement or set off procedures under sections 9.01(A) or (B) of this Agreement. See §1.1474-2(a)(2) for the definition of overwithholding that applies for purposes of this section 9 with respect to an amount withheld under chapter 4.

The reimbursement and set-off procedures that apply to an amount overwithheld by QI's withholding agent under chapter 3 and 4 also apply to an amount overwithheld on an amount realized or an amount subject to withholding under section 1446(a) on a PTP distribution by QI's broker (for an amount realized), or a nominee or PTP (for a PTP distribution).

**(A) Reimbursement Procedure.** QI may request that a withholding agent repay QI for any amount overwithheld and for the withholding agent to reimburse itself under the reimbursement procedures described in §§1.1461-2(a)(2)(i) and 1.1474-2(a)(3) by making the request in the time permitted to apply those procedures with respect to a beneficial owner or payee.

**(B) Set-off Procedure.** QI may request that a withholding agent repay QI by applying the amount overwithheld against any amount which otherwise would be required to be withheld under chapter 3 or 4 from income paid by the withholding agent to QI under the set-off procedures of §§1.1461-2(a)(3) and 1.1474-2(a)(4). QI must make the request in the time permitted to apply those procedures with respect to a beneficial owner or payee.

**Sec. 9.02. Adjustments for Overwithholding by QI Assuming Primary Withholding Responsibility.** QI may make an adjustment for amounts paid to its account holders when QI has overwithheld by applying either the reimbursement or set-off procedures described in this section 9.02 within the time period prescribed for those procedures. The reimbursement and set-off procedures that apply to an amount QI overwithheld under chapter 3 and 4 also apply to an amount QI overwithheld on an amount realized or an amount subject to withholding under section 1446(a) on a PTP distribution.

**(A) Reimbursement Procedure.** QI may repay its account holders for an amount overwithheld under chapter 3 or 4 and reimburse itself by reducing, by the amount of tax actually repaid to the

account holders, the amount of any subsequent deposit of tax required to be made by QI under section 3.08 of this Agreement. For purposes of this section 9.02(A), an amount that is overwithheld shall be applied in order of time (*i.e.*, sequentially) to each of the QI's subsequent deposit periods in the same calendar year to the extent that the withholding taxes required to be deposited for a subsequent deposit period exceed the amount actually deposited. An amount overwithheld in a calendar year may be applied to deposit periods in the calendar year following the calendar year of overwithholding only if:

**(1)** The repayment occurs in the time specified in §§1.1461-2(a)(2) and 1.1474-2(a)(3);

**(2)** QI states on a Form 1042-S (issued, if applicable, to the account holder or otherwise to a chapter 3 or 4 reporting pool), filed in the time specified in §§1.1461-2(a)(2) and 1.1474-2(a)(3), the amount of tax withheld and the amount of any actual repayments; and

**(3)** QI states on a Form 1042, filed in the time specified in §§1.1461-2(a)(2) and 1.1474-2(a)(3), that the filing of the Form 1042 constitutes a claim for credit in accordance with §1.6414-1.

**(B) Set-Off Procedure.** QI may repay its account holders by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 or 4 to be withheld from a payment made by QI to the account holders when the requirements of §1.1461-2(a)(3) (for chapter 3 withholding) or §1.1474-2(a)(4) (for chapter 4 withholding) are satisfied. For purposes of making a return on Form 1042 or 1042-S for the calendar year of overwithholding, and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 or 4.

**Sec. 9.03. Repayment of Backup Withholding.** If QI erroneously withholds, as defined under §31.6413(a)-3, an amount under section 3406 from an account holder, QI may refund the amount erroneously withheld as provided in §31.6413(a)-3.

**Sec. 9.04. Collective Credit or Refund Procedures for Overwithholding.** If there has been overwithholding on amounts subject to chapter 3 or 4

withholding paid to QI's account holders during a calendar year and the amount has not been recovered under the reimbursement or set-off procedures as described in section 9.01 or 9.02 of this Agreement, QI may request a credit or refund of the total amount overwithheld by following the procedures of this section 9.04. QI shall follow the procedures set forth under sections 6402 and 6414, and the regulations thereunder, to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511.

**(A) Payments for which a Collective Refund is Permitted.** Except as otherwise provided in this section 9.04, QI may use the collective refund procedures with respect to all amounts subject to chapters 3 and 4 withholding. With respect to amounts withheld under chapter 3 or 4, QI shall not include in its collective refund claim tax withheld on payments made to an indirect account holder or a direct account holder of QI that is a nonqualified intermediary or flow-through entity, and with respect to amounts withheld under chapter 4, if QI is a participating FFI or registered deemed-compliant FFI, QI shall not include in its collective refund claim tax withheld on payments made to any account holder described in the FFI agreement or in §1.1471-4(h)(2). QI also shall not include in its collective refund claim any overwithholding of tax on an amount realized on a sale of a PTP interest or any amount of tax withheld on a PTP distribution.

**(B) Requirements for Collective Refund.** QI may use the collective refund procedures under this section 9.04 only if the following conditions are met:

(1) QI must not have issued (and will not issue) Forms 1042-S to the account holders that received the payment that was subject to overwithholding;

(2) QI must submit together with its amended Form 1042 on which it provides a reconciliation of amounts withheld and claims a credit or refund, a copy of the Form 1042-S furnished to QI by its withholding agent reporting the taxes withheld to which the claim relates (if applicable) and a statement that includes the following information and representations—

(i) The reason(s) for the overwithholding;

(ii) QI deposited the tax for which a refund is being sought under section 6302 or received a Form 1042-S from its withholding agent showing the amount of tax withheld, and neither QI nor its withholding agent has applied the reimbursement or set-off procedure of §§1.1461-2 and 1.1474-2 to adjust the tax withheld to which the claim relates;

(iii) QI has repaid or will repay the amount for which refund is sought to the appropriate account holders;

(iv) QI retains a record showing the total amount of tax withheld, credits from other withholding agents, tax assumed by QI, adjustments for underwithholding, and reimbursements for overwithholding as it relates to each account holder and also showing the repayment (if applicable) to such account holders for the amount of tax for which a refund is being sought;

(v) QI retains valid documentation that meets the requirements of chapter 3 or 4 (as applicable) to substantiate the amount of overwithholding with respect to each account holder for which the refund is being sought; and

(vi) QI has not issued and will not issue a Form 1042-S (or such other form as the IRS may prescribe) to any account holder with respect to the payments for which the refund is being sought.

**Sec. 9.05. Adjustments for Underwithholding.** If QI knows that an amount should have been withheld under chapter 3 or 4 from a previous payment made to an account holder but was not withheld, QI may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same account holder or payee or satisfy the tax from property that it holds in custody for such person or property over which it has control. QI may also withhold from future payments as described in the preceding sentence with respect to underwithholding on an amount realized or PTP distribution. The additional withholding or satisfaction of the tax owed described in the previous sentence must be made before the due date (not including extensions) of the Form 1042 for the calendar year in which the underwithholding occurred. QI's responsibilities under this section 9.05 will be met if it informs a withholding agent from which it received the payment of the underwithholding

and the withholding agent satisfies the underwithholding.

**Sec. 9.06. Underwithholding After Form 1042 Filed.** If, after a Form 1042 has been filed for a calendar year, QI, QI's reviewer, or the IRS determines that QI has underwithheld tax for such year, QI shall file an amended Form 1042 to report and pay the underwithheld tax. QI shall pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties at the time of filing the amended Form 1042. If QI fails to file an amended return, the IRS shall make such return under section 6020 and assess such tax under the procedures set forth in the Code.

## SECTION 10. COMPLIANCE PROCEDURES

### Sec. 10.01. Compliance Program

**(A) In General.** QI is required to adopt a compliance program under the authority of a responsible officer or, if QI adopts a consolidated compliance program, under the authority of a responsible officer of a Compliance QI (as described in section 10.02(B) of this Agreement). QI's compliance program must include policies, procedures, and processes sufficient for QI to satisfy the documentation, reporting, and withholding requirements of this Agreement and sufficient for a responsible officer of QI (or a Compliance QI) to make the certifications required under section 10.03 of this Agreement. If QI is acting as a QDD, QI's compliance program must also include policies, procedures, and processes sufficient for it to satisfy and report its QDD tax liability and other reporting required as a condition of its status as a QDD. QI must also perform or arrange for the performance of a periodic review described in section 10.04 of this Agreement to the extent required by that section. As part of the responsible officer's certification, QI must provide to the IRS the factual information as required by and referenced in sections 10.04 and 10.05 and in Appendix I to this Agreement. QI must also satisfy the requirements of section 10.06 of this Agreement with respect to the report covering the periodic review and must comply with the IRS review described in section 10.08 of this Agreement.

**(B) Coordination with FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI and, for a Direct Reporting NFFE, the Requirements of §1.1472-1(c)(3).** As a condition for maintaining QI status, QI must maintain its chapter 4 status with respect to each branch of QI operating under this Agreement. Therefore, QI must, as part of the compliance procedures described in this section 10 determine whether it is compliant with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

**(C) Phase-in Years for 871(m).** In enforcing the regulations issued with respect to dividend equivalents under sections 871(m), 1441, 1461, and 1473 (the “section 871(m) regulations”), the IRS will take into account the extent to which the QI (including QIs that are not QDDs) made a good faith effort to comply with the section 871(m) regulations for any delta-one section 871(m) transaction in calendar years 2023 and 2024 and any non-delta-one section 871(m) transaction in calendar year 2025. Similarly, for purposes of the IRS’s enforcement and administration of the QDD rules in the section 871(m) regulations and the relevant provisions of this Agreement, the IRS will take into account the extent to which the QDD made a good faith effort to comply with the section 871(m) regulations and the relevant provisions of this Agreement for calendar years 2023 and 2024. For calendar years 2023 and 2024, a QDD is not required to perform a periodic review with respect to its QDD activities (as otherwise required by section 10.04 of this Agreement) or provide factual information in Appendix I with respect to its QDD activities. In addition, for the QI certification on material failures in calendar years 2023 and 2024, the only certification that a QDD is required to make with respect to its QDD activities for this period is that it has made a good faith effort to comply with the section 871(m) regulations and the relevant provisions of this Agreement for those activities. A revised certification of internal controls (and factual information and other certifications) applicable to a QI’s QDD activities will be added to

this Agreement for purposes of certification periods ending after December 31, 2024. For calendar years 2023 and 2024, a material failure relevant to a QDD has not occurred unless the QDD failed to make a good faith effort to comply with the section 871(m) regulations and the relevant provisions of this Agreement. Similarly, for calendar years 2023 and 2024, a QI will not be considered to have a material failure with respect to a delta-one section 871(m) transaction unless the QI failed to make a good faith effort to comply with the section 871(m) regulations for any of those transactions in those years. For calendar year 2025, a QI will not be considered to have a material failure with respect to a non-delta-one section 871(m) transaction unless the QI failed to make a good faith effort to comply with the section 871(m) regulations for any of those transactions in that year. For any reliance on the good faith standard, the QI must disclose any section 871(m) transactions included in the review that the QI believes should be subject to the good faith standard for purposes of reporting the factual information with its periodic certification and include a brief description of the reason QI relied on the good faith standard, how the QI will address it, and why the good faith standard should apply.

A QI will be considered to satisfy its obligations for purposes of this section 10 that apply specifically to section 871(m) transactions for calendar years 2023 and 2024 provided that the QI made a good faith effort to comply with the relevant terms of this Agreement. Any QI that has not made a good faith effort to comply with its section 871(m) requirements or QDD obligations under this Agreement will not be given any relief from IRS administration or enforcement for calendar years 2023 and 2024, including penalties.

**10.02. Responsible Officer.** QI must appoint an individual as a responsible officer as defined in section 2.72 of this Agreement. The responsible officer must be identified on QAAMS as QI’s responsible party, and such person may, but is not required to, be the same responsible officer for purposes of compliance with QI’s FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. The responsible officer

must establish a compliance program that meets the requirements of this section 10.02 and must make the periodic certifications to the IRS described in section 10.03 of this Agreement. The responsible officer of QI must be an officer of QI with sufficient authority to fulfill the duties of a responsible officer described in this section 10. The responsible officer (or a delegate appointed by the responsible officer) must also serve as the point of contact for the IRS for all issues related to this Agreement and for complying with IRS requests for information or additional review procedures under section 10.07 of this Agreement. References in this section 10.02 to the responsible officer include a responsible officer’s designee, where appropriate.

**(A) Compliance Program.** The responsible officer must establish a program for QI to comply with the requirements of this Agreement that includes the following—

**(1) Written Policies and Procedures.** The responsible officer must ensure the drafting and updating, as necessary, of written policies and procedures sufficient for QI to satisfy the documentation, withholding, reporting, and other obligations of this Agreement, including, with respect to QI that is acting as a QDD, satisfying its QDD tax liability. Such written policies and procedures must include a process for employees of QI to raise issues to the responsible officer (or the responsible officer’s designee) that concern QI’s compliance with this Agreement.

**(2) Training.** The responsible officer must communicate such policies and procedures to any line of business of QI that is responsible for obtaining, reviewing, and retaining a record of documentation under the requirements of section 5 of this Agreement; making payments subject to withholding under section 3 of this Agreement; reporting payments and accounts as required under sections 7 and 8 of this Agreement; or entering into potential section 871(m) transactions, in the case of QI that is acting as a QDD.

**(3) Systems.** The responsible officer must ensure that systems and processes are in place that will allow QI to fulfill its obligations under this Agreement. For example, in order to fulfill QI’s obligations to report on Forms 1042-S, 1099,

and 8966 under section 8 of this Agreement, QI must establish systems for documenting account holders and for recording the information with respect to each such account that QI is required to report under that section.

**(4) Monitoring of Business Changes.** The responsible officer must monitor business practices and arrangements that affect QI's compliance with this Agreement, including, for example, QI's acquisition of lines of businesses or accounts that give rise to documentation, withholding, or reporting obligations under this Agreement.

**(5) QDD Tax Liability Determinations.** If QI is (or has a branch that is) acting as a QDD, the responsible officer must ensure that each QDD has appropriate systems in place to make the necessary determinations and calculations to identify section 871(m) transactions, potential section 871(m) transactions, the amount of dividends received in its QDD equity derivatives dealer capacity and the section 881 taxes paid thereon, its net delta exposure, the dividend amount per share, the stock owned by the QDD included in its net delta exposure long position, its long position, its short position, its section 871(m) amount and the section 881 taxes paid thereon, its QDD tax liability amount, and the amount of dividend equivalent payments made by the QDD, as well as any other necessary information. In the case of a QDD that is a partnership or a branch of a partnership, instead of determining the section 881 taxes, the partnership must have appropriate systems to determine the section 3.09 amounts on a gross basis and the chapter 3 and 4 withholding required with respect to any of its partners with respect to those amounts (as well as any other amounts required to be determined under section 7.01(C) of this Agreement). In addition, the responsible officer must ensure that the QDD has appropriate systems in place to determine whether a transaction is as a principal or non-principal, whether a transaction is in an equity derivatives dealer or non-equity derivatives dealer capacity, whether the transaction exists for federal income tax purposes, whether the transaction is owned by the QDD, and whether the transaction is effectively connected with the conduct of a trade or business in the

United States. This includes appropriate systems to, where required, calculate the delta for a potential section 871(m) transaction, perform the substantial equivalence test described in §1.871-15(h), calculate the amount of a dividend equivalent, determine any QDD tax liability amount (and each part thereof) and its timing, and determine what payments are received or made with respect to potential section 871(m) transactions and underlying securities as a principal and whether in its equity derivatives dealer capacity or non-equity derivatives dealer capacity and by which home office or branch that is acting as a QDD. The systems must also take into account information received pursuant to §1.871-15(p).

**(6) Periodic Review.** Unless QI receives a waiver (the requirements of which are described in section 10.07(B) of this Agreement), the responsible officer must designate a reviewer that meets the qualifications described in section 10.04(A) of this Agreement to perform the periodic review as described in section 10.05 of this Agreement, to the extent required.

**(7) Certification of Internal Controls.** The responsible officer must make the periodic certification as described in section 10.03 of this Agreement, including ensuring that corrective actions are taken in response to any material failures (as defined in section 10.03(B) of this Agreement).

**(B) Consolidated Compliance Program.** The IRS, in its discretion, may permit a consolidated compliance program that includes two or more QIs that are members of a group of entities under common ownership when the QIs: (i) operate under a uniform compliance program for purposes of this Agreement; (ii) share practices, procedures, and systems subject to uniform monitoring and control; and (iii) are subject to a consolidated periodic review that includes a review of internal controls and testing of transactions relevant to this Agreement with respect to each QI in the consolidated compliance program. Each QI that is a member of a consolidated compliance program (CCG member) must designate a Compliance QI to act on its behalf, and the responsible officer of the Compliance QI must identify itself as such when making its periodic

certification and must comply with the identification, certification of internal controls, and periodic review requirements for the QI consolidated compliance program as the IRS may prescribe. Each CCG member must further designate the Compliance QI as its agent for executing a Form 872, *Consent to Extend the Time to Assess Tax*, with respect to any assessment of tax relevant to this Agreement for the period covered by the consolidated compliance program. The Compliance QI must agree to execute any Form 872 on behalf of all of its CCG members and be jointly and severally liable for the obligations and liabilities of any CCG member relating to this Agreement for the period covered by the consolidated compliance program. For purposes of this section 10.02(B), a Compliance QI is required to provide this agreement and the designations from its CCG members in connection with a request by the IRS Foreign Intermediaries Program for an executed Form 872 from the Compliance QI. QIs that want to operate a consolidated compliance program must contact the IRS Foreign Intermediaries Program for approval.

**10.03. Certification of Internal Controls by Responsible Officer.** A QI's responsible officer must make the certification described in either Part II.A (Certification of Effective Internal Controls) or Part II.B (Qualified Certification) of Appendix I to this Agreement and must disclose any material failures that occurred during the certification period or during any prior period if the material failure was not disclosed as part of a prior certification or written disclosure made by QI to the IRS. If the responsible officer has identified a material failure that QI has not corrected as of the date of the certification or an event of default applicable to the certification period, the responsible officer cannot make the certification in Part II.A of Appendix I (Certification of Effective Internal Controls) and must make the certification in Part II.B of Appendix I (Qualified Certification) and attach the remediation plan described in Part II.B.3 of Appendix I. Regardless of which certification is made, QI must provide with its certification a copy of the periodic review report that is described in section 10.05 of this Agreement unless QI applies for a waiver

of its review requirement under section 10.07(B) of this Agreement.

For a QI that uses the third year of the certification period for its periodic review, the certification is due on or before December 31 of the year following the certification period. For a QI that uses the first or second year of the certification period for its periodic review or a QI that obtains a waiver of the periodic review requirement, the certification is due on or before July 1 of the year following the certification period. The initial certification period is the period ending on the third full calendar year that this Agreement is in effect (including renewals of this Agreement). Subsequent certification periods are every three calendar years following the initial certification period (including renewals of this Agreement).

The certification of internal controls required by this section 10.03 applies only to the internal controls related to QI's compliance with this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3), with respect to accounts for which it acts as a QI, and does not relate to any other obligations or requirements. The responsible officer may rely on any reasonable procedure, process, review, or certification that enables the responsible officer to make the certification described in this section 10.03. If the responsible officer relies on an internal or external review for this purpose (*i.e.*, for purposes of determining whether QI has effective internal controls), the internal or external reviewer must be independent, as described in section 10.04 of this Agreement. The responsible officer must document the procedures, processes, reviews, or certifications relied upon in making the certification. QI's responsible officer (or the responsible officer of its Compliance QI) must make the certifications of compliance in such manner as the IRS may prescribe.

**(A) PAIs and Partnership or Trust to which QI Applies the Agency Option.** Unless QI has received a waiver of the periodic review requirement, any PAI with which QI has an agreement and any partnership or trust to which QI applies

the agency option must provide its documentation and other information to QI for inclusion in QI's periodic review or conduct an independent periodic review and provide a written certification to QI regarding its compliance with the requirements of the PAI or agency agreement. Such certification must be available to the IRS upon a request made as part of the review described in section 10.08 of this Agreement (with a certified translation into English if the certification is not in English).

**(B) Material Failures.**

**(1) Material Failures Defined.** A material failure is generally a failure of QI to fulfill the requirements of this Agreement or its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. For purposes of the certifications described in Parts II.A and B of Appendix I to this Agreement, a material failure is limited to the following:

**(i)** QI's establishing of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to QI's failure to comply with this Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, and with respect to QI that is acting as a QDD, failure to satisfy its QDD tax liability and its obligations pursuant to section 871(m) and the regulations under that section.

**(ii)** QI's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of QI to take actions consistent with QI's obligations under this Agreement, or if QI is acting as a QDD, its obligations as a QDD under this Agreement or pursuant to section 871(m) and the regulations under that section.

**(iii)** A criminal or civil penalty or sanction imposed on QI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over QI's compliance with AML/KYC procedures to which QI (or any branch or office thereof) is subject and that is imposed due to QI's failure to properly identify account holders under the requirements of those procedures.

**(iv)** A finding (including a finding noted in the periodic review report described in section 10.06 of this Agreement) for one or more years covered by this Agreement that QI failed to—

**(a)** Withhold an amount that QI was required to withhold under chapter 3 or 4 or under section 3406 as required under section 3 of this Agreement or, if QI is acting as a QDD, failing to timely pay its QDD tax liability;

**(b)** Provide information sufficient for another withholding agent to perform withholding and reporting to the extent required when QI does not assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility;

**(c)** Provide allocation information as described in section 6.03(D) of this Agreement (regarding U.S. non-exempt recipient account holders) by January 15 as required by that section when QI applies the alternative withholding rate pool procedures;

**(d)** Make deposits in the time and manner required by section 3.08 of this Agreement or make adequate deposits to satisfy its withholding obligations, or, if QI is acting as a QDD, timely satisfy its QDD tax liability, taking into account the procedures under section 9 of this Agreement;

**(e)** Report or report accurately on Forms 1099 as required under section 8.06 of this Agreement or provide information to the payor to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibilities;

**(f)** Report or report accurately on Forms 1042 and 1042-S under sections 7 and 8 of this Agreement;

**(g)** Report or report accurately on Form 8966 under sections 8.04 and 8.05 of this Agreement;

**(h)** Withhold an amount required to be withheld or report accurately with respect to U.S. source substitute dividend payments or make timely and adequate deposits of tax due with respect to such payments for which QI is a QSL and acts as a dealer or intermediary;

(i) Withhold an amount that QI was required to withhold on a payment of an amount realized from the sale of a PTP interest or on a PTP distribution as required under section 3 of this Agreement or provide correct information to a withholding agent or broker when QI does not assume primary withholding responsibility for either payment under section 3.02 of this Agreement; or

(j) Comply with the requirements of sections 5.01(A) and 8.07 of this Agreement with respect to one or more account holders that are partners holding PTP interests (including, for purposes of section 8.07 of this Agreement, account holders of another intermediary when QI acts as an agent for meeting these requirements).

**(2) Limitations on Material Failures.**

A failure described in section 10.03(B)(1) (iv) of this Agreement is a material failure only if the failure was the result of a deliberate action on the part of one or more employees of QI to avoid the requirements of this Agreement with respect to one or more account holders of QI or was an error attributable to a failure of QI to establish or implement internal controls necessary for QI to meet the requirements of this Agreement. Regardless of these limitations for certification purposes, QI is required to correct a failure to withhold or deposit tax under section 3 of this Agreement, or to report under section 7 or 8 of this Agreement, or, for a QI that is acting as a QDD, to timely pay its QDD tax liability and timely file the appropriate return (or amended return).

**Sec. 10.04. Periodic Review Absent Waiver.** Unless the QI receives a waiver (the requirements of which are described in section 10.07(B) of this Agreement), when QI provides the certification described in section 10.03 of this Agreement, QI must also provide certain factual information regarding its accounts, withholdable payments, amounts subject to chapter 3 withholding and withholding under sections 1446(a) and (f), and, if QI is acting as a QDD, section 871(m) transactions, potential section 871(m) transactions, and its QDD tax liability based on the results of a periodic review. The

factual information requested is included in Appendix I to this Agreement.

**(A) Independent Reviewer.** The periodic review may be performed by an internal reviewer (such as an internal auditor) that is an employee of QI or an employee of an affiliate of QI (including an employee of a Compliance QI in the case of a consolidated compliance program) (“internal reviewer”), or a certified public accountant, attorney, or third-party consultant (“external reviewer”), or any combination thereof.

**(1) Internal Reviewer.** QI may designate an internal reviewer to perform the periodic review (or a portion of the periodic review) only when the internal reviewer is competent with respect to the requirements of this Agreement. The internal reviewer must also be able to report findings that reflect the independent judgment of the reviewer. The internal reviewer must not be reviewing its own work, procedures, or results (*e.g.*, the internal reviewer, in reviewing QI’s documentation cannot be part of the team primarily responsible for collecting and validating documentation). The results of the periodic review and the internal reviewer’s reporting of such results to the responsible officer cannot influence or affect the compensation, bonus, employment status, or employee review of the internal reviewer. The IRS has the right to request the performance of the periodic review by an alternative reviewer if the IRS, in its sole discretion, reasonably believes that the reviewer selected by QI was not independent, as described in this Agreement, or did not perform an effective periodic review under this Agreement.

In the case of a consolidated compliance program, the Compliance QI may designate an internal reviewer to perform the consolidated periodic review (or a portion of the consolidated periodic review). See section 10.02(B) of this Agreement. The internal reviewer of the Compliance QI must meet the requirements of this section with respect to both the Compliance QI and each QI that is a member of the consolidated compliance program.

If QI designates an internal reviewer that is an employee of an affiliate of QI but is not part of a consolidated compliance program, QI must ensure that the internal

reviewer has access to all necessary information in order to complete the review. In addition, QI must permit the IRS to communicate directly with such internal reviewer.

**(2) External Reviewer.** QI may engage an external reviewer that is a certified public accountant, attorney, or third-party consultant that is regularly engaged in the practice of performing reviews of clients’ policies, procedures, and processes for complying with accounting, tax, or regulatory requirements (including assisting clients in determining such compliance) and that is sufficiently independent of the QI to conduct the review objectively. For this purpose, an external reviewer must (as a minimum) apply the standards of independence that would otherwise apply to its engagement to conduct the periodic review (such as the standards for an agreed-upon procedures engagement by a certified public accountant). The external reviewer must be in good standing with and comply with any applicable professional standards for maintaining its license as an accountant or attorney (or other third-party consultant that has similar professional standards or requirements). The external reviewer is not required to make an attestation or render an opinion regarding QI’s compliance with this Agreement or QI’s compliance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, but the reviewer must be able to perform the periodic review as specified in section 10.05 of this Agreement. QI must permit the external reviewer to have access to all relevant records of QI for purposes of performing the review, including information regarding specific account holders. Additionally, the engagement between the external reviewer and QI must impose no restrictions on QI’s ability to provide the results of the review to the IRS. However, the external reviewer is not required to divulge the identity of QI’s account holders to the IRS, except as otherwise provided under QI’s FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. QI must permit the IRS to communicate directly with the external reviewer, and any legal prohibitions that prevent the



IRS from communicating directly with the reviewer must be waived.

**Sec. 10.05. Scope and Timing of Review.** The responsible officer of QI (or of the Compliance QI) must require the reviewer to test accounts related to QI's documentation, withholding, reporting, and other obligations under this Agreement, including its requirements related to withholding and reporting under sections 1446(a) and (f), its QDD tax liability if QI is acting as a QDD, and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for accounts for which it is acting as a QI, and to identify deficiencies in meeting these obligations. Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option must provide the information necessary for QI to test accounts and transactions of such entity as part of QI's periodic review unless such entity conducts its own periodic review and provides QI with the report documenting the results of such review as described in section 10.06 of this Agreement. Unless otherwise approved by the IRS, the review must include the steps described in section 10.05(A) through (E) of this Agreement.

QI is required to arrange for the performance of one review for the certification period to evaluate QI's documentation, withholding, and reporting practices. If QI is acting as a QDD, this review should also include a review of its determination as to whether transactions are section 871(m) transactions, its computations and determinations of dividend equivalent amounts, dividends and taxes paid thereon, whether transactions are in its equity derivatives dealer capacity, net delta exposure, its section 871(m) amount, and its calculation of its QDD tax liability, as well as any other amounts required to be included on the reconciliation schedule. The review may be conducted for any calendar year covered by the certification period. However, all results of the review must relate to one calendar year. QI may conduct a review for a particular calendar year if, on the due date for reporting the factual information relating to the periodic review (provided in section 10.04 of this Agreement), there are 15 or more months

available on the period for assessment under section 6501(a) of the calendar year for which the review is to be conducted or the QI submits, upon request, a Form 872, *Consent to Extend the Time to Assess Tax*, that will satisfy the 15-month requirement. The Form 872 must be mailed to the IRS at the address provided in section 12.06 of this Agreement.

QI may use a sample to test accounts if there are more than 60 accounts to review. If QI has fewer than 60 accounts, it must review all accounts and cannot use a sample to test accounts. To the extent applicable, the reviewer must separately review its QI activities (when not acting in its QDD capacity) and QDD activities. The reviewer is required to record its sampling procedures and to maintain the ability to reconstruct the sample. Further, the review is not required to include statistical sampling procedures for testing transactions, but the reviewer must document its methodology for sampling determinations. A safe harbor methodology and additional information on the use of statistical sampling is provided in Appendix II to this Agreement.

If the reviewer determines that underwithholding has occurred, QI shall report and pay any amount due. QI must also notify the IRS Foreign Intermediaries Program in accordance with section 12.06 of this Agreement if the underwithholding is discovered in the review. See Appendix II to this Agreement for information required to be provided when reporting underwithholding and information regarding any projection of underwithholding determined when using a sampling method.

**(A) Documentation.** The reviewer must—

(1) Review QI's accounts, to ensure that QI obtained documentation that meets the requirements described in sections 5.01 through 5.09 of this Agreement with respect to payments subject to withholding under chapter 3 (including when attributable to PTP distributions);

(2) Review QI's accounts for which treaty benefits are claimed to ensure that QI obtained the treaty statements and limitation on benefits information required by section 5.03(B) of this Agreement for entity account holders;

(3) Review information contained in account holder files to determine if the

documentation validity standards of section 5.10 of this Agreement have been met for a QI to rely on documentation. For example, the reviewer must verify that changes in account holder information (e.g., a change of an account holder's foreign address to a U.S. address, a change of account holder status from foreign to U.S., or a change in an entity's chapter 4 status from participating FFI to non-participating FFI) are being conveyed by QI to QI's withholding agents and are otherwise being taken into account by the QI for determining its reliance on documentation;

(4) Review the accounts for which QI is acting as a QI to ensure that QI is obtaining, reviewing, and maintaining documentation in accordance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and determining the status of account holders for purposes of chapter 4 or an applicable IGA;

(5) Review accounts held by U.S. non-exempt recipient account holders, to determine if QI obtained Forms W-9, and, if QI does not assume primary Form 1099 reporting and backup withholding responsibility, that QI transmitted those forms to a withholding agent when required under this Agreement;

(6) Review accounts to which QI makes payments of PTP distributions subject to withholding under section 1446(a) to determine whether QI has documented the status of the account holders under the requirements described in sections 5.01 through 5.09 of this Agreement applicable to those payments (including documenting partners of account holders that are foreign partnerships (other than PTPs), documenting grantors and owners of grantor trusts, and requesting the U.S. TINs of account holders receiving these payments under section 5.01(A) of this Agreement);

(7) Review accounts to which QI makes payments of amounts realized to determine whether QI has documented the status of account holders under the requirements described in sections 5.01 through 5.09 of this Agreement applicable to those payments (including documenting partners of account holders that are foreign partnerships certifying to modified amounts realized, documenting grantors

and owners of grantor trusts, and requesting the U.S. TINs of account holders receiving these payments under section 5.01(A) of this Agreement);

(8) For a QI that is a QDD, review accounts that received a reportable payment for which QI is acting as a QDD to determine whether QI has documented the status of account holders under the requirements described in sections 5.01 through 5.09 of this Agreement;

(9) For a QI that assumes primary chapters 3 and 4 withholding responsibility for payments of U.S. source substitute interest, review accounts of persons to which QI pays the interest to determine whether QI has documented the status of such persons under the requirements described in sections 5.01 through 5.09 of this Agreement; and

(10) For QI that is a QSL or that otherwise assumes primary withholding responsibility as an intermediary for U.S. source substitute dividend payments, review accounts to which QI pays U.S. source substitute dividends to determine whether QI has documented the status of the account holders under the requirements described in sections 5.01 through 5.09 of this Agreement.

**(B) Withholding Rate Pools.** The reviewer must—

(1) Perform checks using account holders assigned to each withholding rate pool, and cross check that assignment against the documentation provided by the account holder (or the presumption rule applied under section 5.13 of this Agreement), the type of income earned, and the withholding rate applied to the pool, taking into account the results of the documentation review under section 10.05(A) of this Agreement and the appropriate withholding rate to be applied to a treaty claim (or withholding rate otherwise applicable to the income paid), to determine any underwithholding. For purposes of these checks, at a minimum the last payment of each income type paid to the account for the year (by reference to the income classifications on Form 1042-S as compared (for accuracy) to the income reported in QI's account statements for the account holder) may be used.

(2) Determine that appropriate withholding rate pools are established for U.S. non-exempt recipients that received

reportable amounts, and if QI is using the procedure for U.S. non-exempt recipients described in section 6.03(D) of this Agreement, verify that QI is providing sufficient and timely information to withholding agents to allocate reportable amounts to U.S. non-exempt recipients; and

(3) With respect to a partnership or trust described in section 4.05 of this Agreement, determine whether the partnership or trust has a chapter 4 status permitted under section 4.05(A) of this Agreement and perform test checks using account holder documentation for the selected partners, beneficiaries, or owners and records of each type of reportable amount paid by QI to the entity to determine whether the highest rate of withholding applicable to each type of reportable amount is reflected in QI's withholding rate pools. Determine any underwithholding resulting from either of these review steps.

**(C) Withholding Responsibilities.** Taking into account the results of the documentation review under sections 5.10(A) of this Agreement, the appropriate withholding rate applied to a treaty claim (or otherwise applicable to the income paid), and the presumption rules (when applicable) under 5.13 of this Agreement, the reviewer must determine any underwithholding by applying the review steps below—

(1) To the extent QI has assumed primary chapters 3 and 4 withholding responsibilities, perform test checks, using recalcitrant account holders (when applicable) and nonparticipating FFIs, to verify that QI withheld the proper amounts under chapter 4;

(2) To the extent QI has assumed primary chapters 3 and 4 withholding responsibility, perform test checks, using foreign account holders for which no withholding is required under chapter 4 based on the payee's chapter 4 status, to verify that QI withheld the proper amounts under chapter 3 and properly applied the exemptions from chapter 4 withholding;

(3) To the extent QI has not assumed primary chapters 3 and 4 withholding responsibility, perform test checks to verify that QI has fulfilled its withholding responsibilities under section 3.02 of this Agreement (including any required withholding by QI if QI provided to its

withholding agent any incorrect withholding rate pools by comparison to the correct withholding rates for payments associated with a withholding rate pool);

(4) To the extent QI has assumed primary Form 1099 reporting and backup withholding responsibility for account holders receiving reportable payments from QI, perform test checks using U.S. non-exempt recipient account holders to verify that QI backup withheld when required;

(5) To the extent QI has not assumed primary Form 1099 reporting and backup withholding responsibility for account holders receiving reportable payments, perform test checks using U.S. non-exempt recipient account holders to verify that QI fulfilled its backup withholding responsibilities under sections 3.04 through 3.06 of this Agreement;

(6) To the extent QI has assumed primary withholding responsibility on payments of PTP distributions, perform test checks of payments to accounts to which QI pays PTP distributions, to verify QI withheld the proper amounts under chapters 3 and 4, and sections 1446(a) and (f) on the distributions, including by determining the amounts subject to withholding by reference to the qualified notice issued for a distribution or applying the default rule of §1.1446-4(d)(1);

(7) To the extent QI has assumed primary withholding responsibility on amounts realized from sales of PTP interests, perform test checks of payments to accounts to which QI pays amounts realized, to verify QI withheld the proper amounts for purposes of section 1446(f), including that QI applied the "10-percent exception" of §1.1446(f)-4(b)(3) to exempt any amounts from withholding only as permitted under that section;

(8) To the extent QI has not assumed primary withholding responsibility on payments of PTP distributions or amounts realized from sales of PTP interests and provides withholding rate pools to a withholding agent, perform test checks to determine whether QI has satisfied any withholding required under section 3.02 of this Agreement by comparison to the correct withholding rates for payments associated with a withholding rate pool;

(9) To the extent that QI acts as a disclosing QI, perform test checks to compare the withholding reported on Forms

1042-S issued to QI and QI's direct account holders (other than QIs or NQIs) to the correct withholding to verify that QI withheld to the extent required under section 3.02 of this Agreement;

(10) To the extent that QI is acting as a QDD, perform test checks to determine that QI withheld when required on payments that it made with respect to potential section 871(m) transactions;

(11) To the extent that QI acts as a QSL or otherwise assumes primary chapter 3 and 4 withholding responsibility as an intermediary on payments of U.S. source substitute dividends, perform test checks to determine that QI withheld when required on such payments and determine whether QI has a policy in effect to assume primary withholding responsibilities on all such payments;

(12) To the extent that QI assumes chapter 3 and 4 withholding responsibility on payments of U.S. source substitute interest, perform test checks to determine that QI withheld when required on such payments and determine whether QI has a policy in effect to assume primary withholding responsibilities on all such payments;

(13) To the extent that QI assumes primary withholding responsibility for payments to a partnership or trust described in section 4.05 of this Agreement, perform the review steps described in section 10.05(b)(3) of this Agreement (as applied to QI's own withholding rather than QI's withholding rate pools); and

(14) Perform test checks to verify that amounts withheld by QI were timely deposited in accordance with section 3.08 of this Agreement.

**(D) Return Filing and Information Reporting.** The reviewer must—

(1) Obtain copies of original and amended Forms 1042 and 945, and any schedules, statements, or attachments required to be filed with those forms, verify that the forms have been filed, and determine whether the amounts of income, taxes, and other information reported on those forms are accurate by—

(i) Reviewing copies of Forms 1042-S that withholding agents have provided QI to determine whether QI properly reported the amount of taxes withheld by other withholding agents on Form 1042;

(ii) Reviewing account statements and correspondence from withholding agents;

(iii) Determining that adjustments to the amount of tax shown on Form 1042 (and any claim by QI for refund or credit) properly reflect the adjustments to withholding made by QI using the reimbursement or set off procedures under section 9.02 of this Agreement and are supported by sufficient documentation;

(iv) Reconciling amounts shown on Forms 1042 with amounts shown on Form 1042-S (including the amount of taxes reported as withheld);

(v) If QI is acting as a QDD, reviewing the reconciliation schedule described in section 7.01(C) of this Agreement and any information used to prepare such schedule or compute its QDD tax liability, including information received pursuant to §1.871-15(p), reviewing the amounts required to determine its section 871(m) amounts and its QDD tax liability over the applicable period, and reviewing such information to determine whether the section 871(m) amounts and QDD tax liability have been properly calculated;

(vi) If QI is acting as a QDD, reviewing amounts shown on Forms 1042 (including all required Schedules Q) and Forms 1042-S, as well as any information received pursuant to §1.871-15(p), to determine whether the QDD properly took the information into account (*e.g.*, to calculate its QDD tax liability);

(vii) To the extent QI acts as a QSL, determine that QI properly reported the gross amount of the U.S. source payments of substitute dividends to which the recipient would have otherwise been entitled before consideration of any withholding tax obligations; the amount of tax withheld by the withholding agent; and the amount of tax withheld by other withholding agents in the series of securities lending or sale-repurchase transaction;

(viii) In the case of collective credits or refunds, reviewing the statements attached to amended Forms 1042 filed to claim a collective refund, determine whether those forms are accurate, and—

(a) Determine the causes of any overwithholding reported and ensure QI did not issue Forms 1042-S to persons whom it included as part of its collective credit or refund;

(b) Determine that QI repaid the appropriate account holders and that the amount of the claim is accurate and supported by adequate documentation; and

(c) Determine that QI did not include payments made to a partnership or trust described in section 4.05 of this Agreement or a payment of an amount subject to withholding under section 1446(f) or on a PTP distribution.

(2) Obtain copies of original and corrected Forms 1042-S and Forms 1099 filed by QI, together with the work papers used to prepare those forms, and determine whether the amounts reported on those forms are accurate by—

(i) Reconciling payments and tax reported on Forms 1042-S received from withholding agents with amounts (including characterization of income) and taxes reported by QI as withheld on Forms 1042-S and determining the reason(s) for any variance;

(ii) Reviewing the Forms W-8IMY and the associated withholding statements that QI has provided withholding agents;

(iii) Reviewing account statements issued by QI to account holders;

(iv) Determining, in the case in which QI utilized the reimbursement or set-off procedure, that QI satisfied the requirements of section 9.02 of this Agreement and that the adjusted amounts of tax withheld are properly reflected on Forms 1042-S.

(3) Obtain copies of original and amended Forms 8966 (or, for QI that is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to the applicable Model 1 IGA) of accounts for which QI is acting as a QI, and determine whether the amounts of income and other information reported on Forms 8966 are accurate by—

(i) Reviewing U.S. accounts (or U.S. reportable accounts for which QI acts as a QI) to determine that such accounts were reported in accordance with QI's

FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(ii) If QI is an NFFE acting as a QI on behalf of persons other than its shareholders, confirming that if QI is acting on behalf of a passive NFFE with substantial U.S. owners, withholdable payments made to the passive NFFE and the information regarding its substantial U.S. owners were reported;

(iii) Confirming with respect to any nonqualified intermediary or flow-through entity that provides information regarding an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners that such substantial U.S. owners were reported to the extent required under section 8.04(B) of this Agreement;

(iv) Reviewing the documentation provided by a PAI or a partnership or trust to which QI applied the agency option to determine that QI reported on Form 8966 to the extent required under section 4 of this Agreement; and

(v) Reviewing work papers used to prepare these forms.

(4) Obtain records of any reportable payments paid by QI to its U.S. account holders to identify any U.S. account holders for which QI failed to file an applicable Form 1099 (to the extent required) or report on a Form 8966 (or analogous reporting under an applicable Model 1 IGA).

(5) If QI is acting as a QDD, review accounts designated as accounts for which QI acted as a QDD to determine whether QI is acting as a QDD with respect to all potential section 871(m) transactions and underlying securities for which it is required to act as a QDD and not any other transactions and whether the section 871(m) amount includes the amounts in its equity derivatives dealer capacity and not amounts in its non-equity derivatives dealer capacity.

(6) Obtain records of account holders to which QI paid a PTP distribution or an amount realized from a sale of a PTP interest to verify that QI properly provided the statements or other information required under section 8.07 of this Agreement with respect to the account holders.

(7) Determine whether QI has any agreements in place under section 8.02(M) of this Agreement to report on Form 1042-S amounts realized paid to an NQI's account holders and, if so, verify that QI reported on Form 1042-S as agreed or otherwise has a written agreement in place with another withholding agent to report these amounts.

(E) **Significant Change in Circumstances.** The reviewer must verify that in the course of the review it has not discovered any significant change in circumstances, as described in section 11.04(A), (D), or (E) of this Agreement.

#### **Sec. 10.06 Periodic Review Report.**

(A) **In General.** The results of the periodic review must be documented in a written report addressed to the responsible officer of QI and submitted to the IRS with the certification described in section 10.03 of this Agreement (with a certified translation into English if the report is not in English). The report must describe the scope of the review and the actions performed to satisfy each requirement of section 10.05(A) through (E), including the methodology for sampling determinations. The report may include explanatory footnotes to clarify the results of the report. Recommendations may be included but are not required to be provided in the report. The periodic review report should form the basis for the factual information provided by QI that is set forth in Appendix I.

In addition to the findings of section 10.05 of this Agreement, the periodic review report should also include details regarding the documentation and tax deposit and payment failures identified by the reviewer but then cured before the periodic review report is finalized. While the curing of inadequate documentation is permissible, the factual information reported (as set forth in Appendix I) should report the results of the review as it was performed and should not reflect the results after curing (unless stated otherwise). Any curing process should not delay certification of internal controls or factual information required in Appendix I to this Agreement. To the extent necessary, the periodic review report should include the dates on (or time period during) which curative documentation was received for accounts with respect to which the

reviewer determined that underwithholding had occurred, the number of accounts for which curative documentation was obtained and a revised calculation of the underwithholding or additional backup withholding.

(B) **Periodic Review Report for QDDs.** If QI is acting as a QDD, the periodic review report should also include the number of accounts that were not correctly treated as (i) principal accounts (except accounts that are effectively connected with the conduct or a trade or business within the United States within the meaning of section 864), (ii) non-principal accounts, (iii) principal accounts that are effectively connected with the conduct or a trade or business within the United States within the meaning of section 864, (iv) equity derivatives dealer accounts, and (v) non-equity derivatives dealer accounts. The report should also include any other issues related to the QDD tax liability (e.g., incorrect determination of whether an account is a potential section 871(m) transaction or a section 871(m) transaction, the dividends received in the QDD's equity derivatives dealer capacity and the taxes paid on those dividends, the net delta exposure, the section 871(m) amount and the taxes on the section 871(m) amount, the amount of dividend equivalent payments made, or any other amounts subject to tax (or required to compute the tax liability) under section 871(a) and 881 (including the QDD tax liability)) for each QDD.

(C) **PAI Certification and Partnership or Trust to which QI Applies the Agency Option.** Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option that does not provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement, must conduct an independent periodic review in accordance with the compliance procedures described in section 10.05 of this Agreement. The performance results of the periodic review must be documented in a written report addressed to the responsible officer of QI and must be available to the IRS upon request (with a certified translation into English if the report is not in English).

**(D) Retention of Report and Certifications.** The report and certifications described in this section 10.06 must be retained by QI (or the Compliance QI) for as long as this Agreement is in effect.

**Sec. 10.07. Waiver of Periodic Review Requirement.**

**(A) In General.** A QI that is not acting as a QDD and that is an FFI that meets the requirements of section 10.07(B) may apply for a waiver of the periodic review requirement. Notwithstanding the prior sentence, a QI that is acting as a QDD and otherwise qualifies to apply for a waiver of the periodic review requirement, may do so for calendar year 2023 or 2024. QI must request a waiver of the periodic review requirement under this section 10.07 when the responsible officer makes the certification described in section 10.03 of this Agreement. QI's application for such a waiver must be approved by the IRS, and waiver applications are not approved automatically. QI must apply for a waiver for each certification period for which a waiver is requested. If QI's request for a waiver of the periodic review requirement is granted, such approval is only to waive QI's obligations under sections 10.04 and 10.05 of this Agreement, and QI is still required to make the certification described in section 10.03 of this Agreement. The waiver also does not preclude the IRS from requesting information or conducting a correspondence review as described in section 10.07 of this Agreement. QI must include the information of any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option in its waiver application which is set forth in Part III of Appendix I to this Agreement. QI must also provide the information set forth on Appendix III to this Agreement for each year of the certification period.

**(B) Eligibility.** QI is eligible to apply for a waiver of the periodic review requirement if it meets the following requirements—

(1) QI must be an FFI and, for calendar years after 2024, that is not also acting as a QDD;

(2) QI is not part of a consolidated compliance program;

(3) For each calendar year covered by the certification period, the reportable amounts received by QI do not exceed

\$5 million (including the amount of PTP distributions subject to withholding under chapter 3 or 4);

(4) QI timely filed its Forms 1042, 1042-S, 945, 1099, and 8966 (or the reporting otherwise required under an applicable IGA), as applicable, for all calendar years covered by the certification period;

(5) QI made all periodic certifications and reviews required by sections 10.02 and 10.03 of this Agreement as well as all certifications required pursuant to QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI; and

**(C) Documentation Required with Waiver Application.** When applying for a waiver under this section 10.07, QI must include the information described in Appendix I to this Agreement using the most recent calendar year covered by the certification period and reporting such results without any curing or remediation.

**(D) Approval.** If QI's request for a waiver of the periodic review requirement is approved, the IRS will notify QI. If QI requests a waiver but such request is not approved, QI will be granted a six-month extension from the date of denial of the waiver to complete the periodic review. Such extension will not be granted if QI has made the request for waiver in bad faith.

**Sec. 10.08. Periodic Review.**

**(A) In General.** Based upon the certifications made by the responsible officer and the disclosure of material failures, the information reported on Forms 945, 1042, 1042-S, 1099, and 8966 filed with the IRS during the certification period, or otherwise at the IRS's discretion for compliance purposes, the IRS may initiate requests of QI under this section 10.08. The IRS may preemptively request remediation or the conduct of a limited periodic review earlier than the time period provided in this section 10 if, based on the information described above, the IRS identifies, in its discretion, a presence of factors indicating systemic or significant compliance failures by QI. The IRS may also request that QI designate a replacement responsible officer if QI's responsible officer has not complied with its responsibilities (including responding to requests by the IRS for

additional information) or the IRS has information that indicates the responsible officer may not be relied upon to comply with its responsibilities.

**(B) Correspondence Review.** The IRS may, in its discretion, conduct additional fact finding through a correspondence review. In such a review, the IRS will contact the responsible officer of QI (or the Compliance QI) in writing and request information about QI's compliance with this Agreement or the compliance of a PAI or a partnership or trust to which QI applied the agency option, including, for example, information about documentation, withholding, or reporting processes, its periodic review, and information about any material failures that were disclosed to the IRS (including remediation plans). The IRS may request phone or video interviews with employees of QI (and the Compliance QI), a PAI, or a partnership or trust to which QI applied the agency option as part of the IRS's correspondence review. QI is required to respond in a reasonable time to any such requests.

**(C) Additional Review Procedures.** In limited circumstances, the IRS may direct QI (or the Compliance FFI) or any PAI or partnership or trust to which QI applies the agency option to perform additional, specified review procedures. The IRS reserves the right to require QI (or the Compliance QI) or a PAI, or a partnership or trust to which QI applied the agency option to engage an external reviewer to perform the additional review procedures regardless of whether such reviewer performed the periodic review. The IRS will provide the responsible officer of QI with a written plan describing the additional review procedures and will provide a due date of not more than 120 days for the QI to provide to the IRS a report covering the reviewer's findings.

**SECTION 11. EXPIRATION, TERMINATION, MERGER AND DEFAULT**

**Sec. 11.01. Term of Agreement.** This Agreement begins on the effective date referenced in section 2.22 of this Agreement and expires on December 31, 2028, unless terminated before that time under section 11.02 of this Agreement. This

Agreement may be renewed for a further term as provided in section 11.08 of this Agreement.

**Sec. 11.02. Termination of Agreement.**

**(A) In General.** This Agreement may be terminated by either the IRS or QI before the end of its term by delivery of a notice of termination to the other party, in accordance with section 12.06 of this Agreement. The IRS, however, shall not terminate this Agreement unless there has been a significant change in circumstances, as defined in section 11.04 of this Agreement, or an event of default has occurred, as defined in section 11.06 of this Agreement, and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this Agreement. In addition, the IRS may also terminate this Agreement before the end of its term if as a result of an amendment in accordance with section 12.02 of this Agreement, the QDD is no longer entitled to act as a QDD. The IRS shall not terminate this Agreement for an event of default if QI can establish to the satisfaction of the IRS that all events of default for which it has received notice have been cured within the time period agreed upon. The IRS shall notify QI that an event of default has occurred and that the IRS intends to terminate the Agreement unless QI cures the default or establishes that no event of default occurred. A notice of termination sent by either party shall take effect on the date specified in the notice, and QI is required to notify its withholding agent of the date that its status as a QI is terminated.

The termination of the Agreement shall not affect any of QI's reporting, tax filing, withholding, depositing, or payment responsibilities arising in the calendar years for which this Agreement was in effect and portion of the calendar year in which termination is requested. The IRS shall revoke QI's QI-EIN within a reasonable time after the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences.

**(B) Periodic Review and Final Certification after Termination of Agreement.**

Upon termination of this Agreement, QI must provide to the IRS, within six months of the date of termination, the certification described in section 10.03 of this Agreement covering the period from the end of the most recent certification period (or, if the first certification period has not ended, the effective date of this Agreement) to the date of termination. Additionally, QI must submit a periodic review report that meets the requirements of section 10.06 of this Agreement with its final certification if this Agreement is terminated in the final year of QI's certification period. QI may request a waiver of the periodic review requirement for this purpose if it is otherwise eligible for a waiver under section 10.07 of this Agreement. If a waiver is not granted, QI must use one of the two prior years of the certification period for its periodic review. Regardless of whether QI is required to submit a periodic review report under this section 11.02(B), the IRS may request that QI perform specified review procedures in accordance with section 10.08(C) of this Agreement with respect to QI's final certification period. See section 11.05(B) of this Agreement for a case in which a QI terminating this Agreement merges into or is acquired by another QI.

**Sec. 11.03. Loss of QDD Status.** If QI is acting as a QDD and the home office or branch, as applicable, fails to qualify as an eligible entity during the term of this Agreement, the home office or branch shall lose its QDD status immediately upon the QDD failing to qualify as an eligible entity and as of that date can no longer act as a QDD. QI is required to notify its withholding agent of the date that the QDD failed to qualify as an eligible entity and no longer was permitted to act as a QDD. The QDD's loss of QDD status shall not affect any of QI's QDD reporting, tax filing, withholding, depositing, or payment responsibilities for the period QI was acting as a QDD as provided in this Agreement, including paying its QDD tax liability.

**Sec. 11.04. Significant Change in Circumstances.** For purposes of this Agreement, a significant change in circumstances includes, but is not limited to—

**(A)** An acquisition of all, or substantially all, of QI's assets in any transaction

in which QI is not the surviving legal entity;

**(B)** A change in U.S. federal law, or applicable foreign law, that affects the validity of any provision of this Agreement, materially affects the procedures contained in this Agreement, or affects QI's ability to perform its obligations under this Agreement;

**(C)** A ruling of any court that affects the validity of any material provision of this Agreement;

**(D)** A material change in the applicable know-your-customer rules and procedures;

**(E)** A significant change in QI's business practices that affects QI's ability to meet its obligations under this Agreement;

**(F)** If QI is an FFI, QI's failure to maintain its status as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

**(G)** If QI is acting as a sponsoring entity on behalf of a sponsored FFI or sponsored direct reporting NFFE, if it fails to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity; or

**(H)** If QI is acting as a QDD, the home office or branch, as applicable, ceases to qualify as an eligible entity, including as a result of a change in its business or regulatory status (see section 11.03).

**Sec. 11.05. Merger.**

**(A) In General.** If a QI (predecessor QI) merges with or is acquired by another QI (successor QI), and the successor QI assumes all the rights, debts, and obligations of the predecessor QI as it relates to the predecessor QI's QI agreement, the predecessor QI must notify the IRS that it intends to terminate this Agreement before the end of its term by delivery of a notice of termination and merger in accordance with section 12.06 of this Agreement. A notice of termination and merger shall take effect on the date specified in the notice, and QI is required to notify its withholding agent of the date that its status as a QI is terminated and designate the successor QI to receive payments in its capacity as a QI for any accounts previously covered by the predecessor QI's QI agreement.

The successor QI must ensure that all reporting and tax filing obligations are fulfilled and any withholding is deposited in

accordance with the procedures outlined in Rev. Proc. 99-50, 1999-2 C.B. 757, when applicable, that arose in the calendar years and portion of the calendar year in which termination is requested and for which this Agreement was in effect (including for Form 1042-S filed to report withholding under chapter 4). To the extent QI is acting as a QDD, it must use the standard procedure outlined in Rev. Proc. 99-50 and cannot use the alternative procedures. See QI's FATCA Requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for the procedures, if any, for reporting on Form 8966 in the case of a merger or acquisition.

The IRS shall revoke the predecessor QI's QI-EIN within a reasonable time after the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences.

**(B) Periodic Review and Certification after Merger.** A predecessor QI that is terminating its QI agreement and that is required to submit a periodic review report under section 11.02(B) of this Agreement may satisfy this requirement through a combined periodic review. A combined periodic review for purposes of this section 11.05(B) is a periodic review that covers a calendar year that the predecessor QI is permitted to use under section 11.02(B) of this Agreement and that includes accounts of both the predecessor QI and successor QI in the population of accounts for purposes of the review steps of section 10.05 of this Agreement covering documentation and withholding requirements. See Appendix II of this Agreement for information on designing a statistical sample for a combined periodic review. The certifications required for both the predecessor QI and successor QI for the period covered by the combined review must include the factual information specific to each QI that is required under Appendix I of this Agreement. A predecessor QI may obtain a six-month extension of the time to submit a final certification under section 11.02(B) of this Agreement for purposes of this section 11.05(B). The request for an extension must indicate that it is being made due to the combined periodic review and be

delivered to the IRS in accordance with section 12.06 of this Agreement before the time otherwise required for the final certification.

**Sec. 11.06. Event of Default.** For purposes of this Agreement, an event of default occurs if QI fails to perform any material duty or obligation required under this Agreement and the responsible officer had actual knowledge or should have known of the facts relevant to the failure to perform any material duty. An event of default includes, but is not limited to, the occurrence of any of the following:

**(A)** QI fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement;

**(B)** QI underwithholds a material amount of tax that QI is required to withhold under chapter 3, section 1446(a), section 1446(f), or chapter 4, or backup withhold under section 3406 and fails to correct the underwithholding by filing an amended Form 1042 or 945 reporting, and paying, the appropriate tax;

**(C)** QI makes excessive refund claims;

**(D)** Documentation described in section 5 of this Agreement is lacking, incorrect, or unreliable for a significant number of direct account holders under the requirements of section 5.01(A) of this Agreement;

**(E)** QI files Forms 945, 1042, 1042-S, 1099, or 8966 that are materially incorrect or fraudulent, or fails to comply materially with the requirements of section 8.07 of this Agreement with respect to account holders that are partners holding PTP interests (including account holders of another intermediary when QI acts as an agent for meeting these requirements);

**(F)** If QI is an FFI, QI fails to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

**(G)** If QI is a sponsoring entity, QI fails to materially comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;

**(H)** QI fails to materially comply with the requirements of a nonqualified intermediary under chapters 3 and 61, and sections 1446 and 3406 with respect to any account for which QI does not act as a QI.

**(I)** QI fails to perform a periodic review when required or document the findings of such review in a written report;

**(J)** QI fails to cooperate with the IRS on its compliance review described in section 10.08 of this Agreement;

**(K)** QI fails to inform the IRS of any change in the applicable know-your-customer rules within 90 days of the change becoming effective;

**(L)** QI fails to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects QI's obligations under this Agreement;

**(M)** QI fails to inform the IRS of any PAI of QI, as described in section 4 of this Agreement;

**(N)** QI fails to cure a material failure identified in the qualified certification described in Part II.B of Appendix I to this Agreement or identified by the IRS;

**(O)** QI makes any fraudulent statement or a misrepresentation of material fact with regard to this Agreement to the IRS, a withholding agent, or QI's reviewer;

**(P)** The IRS determines that QI's reviewer is not sufficiently independent, as described in this Agreement, to adequately perform its review function, and QI fails to arrange for a periodic review conducted by a reviewer approved by the IRS;

**(Q)** An intermediary with which QI has a PAI agreement is in default with that agreement and QI fails to terminate that agreement within the time period specified in section 4.04 of this Agreement;

**(R)** A partnership or trust to which QI applies the agency option is in default with that agreement and QI fails to terminate that agreement within the time period specified in section 4.06 of this Agreement; and

**(S)** If QI is acting as a QDD, QI fails to timely pay a material amount of its QDD tax liability and fails to correct the underpayment and pay the appropriate tax amount.

**Sec. 11.07. Notice and Cure.** Upon the occurrence of an event of default, the IRS will deliver to QI a notice of default specifying each event of default. QI must respond to the notice of default within 60 days (60-day response) from the date of the notice of default. The 60-day response shall contain an offer

to cure the event of default and the time period in which to cure or shall state why QI believes that no event of default occurred. If QI does not provide a 60-day response, the IRS will deliver a notice of termination as provided in section 11.02 of this Agreement. If QI provides a 60-day response, the IRS shall either accept or reject QI's statement that no default has occurred or QI's proposal to cure the event of default. If the IRS rejects QI's contention that no default has occurred or rejects QI's proposal to cure the event of default, the IRS may offer a counter proposal to cure the event of default with which QI will be required to comply within 30 days. If QI fails to provide a 30-day response, the IRS will send a notice of termination in accordance with section 11.02 of this Agreement to QI, which QI may appeal within 30 days of the date of the notice by sending a written appeal to the address specified in section 12.06 of this Agreement. If QI appeals the notice of termination, this Agreement shall not terminate until the appeal has been decided. If an event of default is discovered in the course of a review, the QI may cure the default, without following the procedures of this section 11.07, if the external reviewer's report describes the default and the actions that QI took to cure the default and the IRS determines that the cure procedures followed by QI were sufficient. If the IRS determines that QI's actions to cure the default were not sufficient, the IRS shall issue a notice of default and the procedures described in this section 11.07 shall be followed.

**Sec. 11.08. Renewal.** If QI intends to renew this Agreement, it must submit an application for renewal to the IRS on QAAMS. This Agreement will be renewed only upon the agreement of both QI and the IRS. A QI that seeks to renew its QI agreement and also seeks to become a QDD (that was not previously acting as a QDD) must supplement the renewal request by providing a statement containing all information required by Form 14345 relating to a QDD.

## **SECTION 12. MISCELLANEOUS PROVISIONS**

**Sec. 12.01.** QI's application to become a QI, all Appendices to this Agreement and know-your-customer rules included in a country attachment on IRS.gov relevant to QI (or a branch of QI), and, if QI is an FFI, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, are hereby incorporated into and made an integral part of this Agreement. This Agreement constitutes the complete agreement between the parties. A QI may only represent its status as a QI for payments described in this Agreement and may not act as a QI for any payments without having the Agreement in effect for the applicable year.

**Sec. 12.02.** This Agreement may be amended by the IRS if the IRS determines that such amendment is needed for the sound administration of the internal revenue laws or internal revenue regulations. This Agreement will only be modified through published guidance issued by the IRS and U.S. Treasury Department. Any such modification imposing additional requirements will in no event become effective until the later of 90 days after the IRS provides notice of such modification or the beginning of the next calendar year following the publication of such guidance.

**Sec. 12.03.** Any waiver of a provision of this Agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this Agreement or the same provision at a later date.

**Sec. 12.04.** This Agreement shall be governed by the laws of the United States. Any legal action brought under this Agreement shall be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, QI agrees to submit to the jurisdiction of such United States court.

**Sec. 12.05.** QI's rights and responsibilities under this Agreement cannot be assigned to another person.

**Sec. 12.06.** Except as otherwise provided on QAAMS, all written notices sent to the IRS by QI must be sent by either e-mail to [lbi.fi.qiwpissues@IRS.gov](mailto:lbi.fi.qiwpissues@IRS.gov) or by registered, first class airmail (with each such notice to include the QI's name, QI-EIN, GIIN (if applicable), and the name of its responsible officer), addressed as follows:

Internal Revenue Service  
Foreign Payments Practice  
Foreign Intermediaries Program  
290 Broadway, 12th Floor NW  
New York, New York 10007-1867

Written notices provided to QI under this Agreement shall be sent by IRS by secure e-mail to the responsible officer of the QI and all contact persons identified by QI.

**Sec. 12.07.** QI, acting in its capacity as a QI or in any other capacity, does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

## **SECTION 7. EFFECTIVE DATE**

The effective date of the 2023 QI Agreement contained in section 6 of this revenue procedure is on or after January 1, 2023.

## **SECTION 8. PAPERWORK REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1597.

## **SECTION 9. DRAFTING INFORMATION**

The principal author of this revenue procedure is W. Shawver Adams of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact John Sweeney at (202) 317-5002 (not a toll-free call) or, with respect to QDDs, Peter Merkel or Karen Walny at (202) 317-6938 (not a toll-free number).



## *APPENDIX I*

General Instructions: QIs must provide the information and certifications described in this Appendix I as applicable to their QI status and activities. The following Parts must be completed by the specified QIs:

- Part I: All QIs.  
Part II: All QIs.  
Part III: QIs eligible pursuant to section 10.07(A) and (B) of the QI agreement to apply for a waiver of the periodic review requirement (as described in section 10.07 of the QI agreement) and who wish to apply for such a waiver. Under section 10.07(A) and (B) of the QI agreement, the following QIs are not eligible for a waiver: (a) QIs that are NFFEs, (b) QIs that are acting as QDDs (for calendar years after 2024), and (c) QIs that are part of a consolidated compliance program.  
Part IV.A: All QIs that have not applied for or have not been approved for a waiver.  
Part IV.B-F: All QIs, excluding QIs that are only acting as QDDs and have no other QI activities, that have not applied for or have not been approved for a waiver.  
Part V: All QIs that are acting as QDDs.  
Part VI: All QIs that assume primary withholding responsibility for payments of substitute interest, except QIs seeking a waiver in Part III of Appendix I. A QI that assumes primary withholding responsibility for payments of substitute interest and that applies for a waiver need not complete Part VI of this Appendix I. Such QI should complete Parts I, II, and III of Appendix I, and in Part III.B of Appendix I, include information relating to payments of substitute interest for which the QI assumed primary withholding responsibility (in addition to its other QI activities, other than its activities as a QDD).  
Part VII: All QIs acting as QIs with respect to PTP-related payments (as described in Part VII), excluding QIs seeking a waiver in Part III of Appendix I. A QI that makes any of the payments described in the preceding sentence and that applies for a waiver need not complete Part VII of Appendix I and should only complete Parts I, II, and III of this Appendix I.

A Compliance QI may complete Parts I and II for the QI members of its consolidated compliance group. However, the factual information provided in Parts IV through VII must be completed separately for each QI member in the consolidated compliance group.

### ***PART I. GENERAL INFORMATION***

- A. Did QI assume primary chapters 3 and 4 withholding responsibility for any calendar year covered by the certification period (excluding withholding under chapter 3 or 4 on PTP distributions)? Y/N
- B. Did QI assume primary Form 1099 reporting and backup withholding responsibility for any calendar year covered by the certification period? Y/N
- C. Did QI assume primary withholding responsibility for any payments of PTP distributions or amounts realized from sales of PTP interests subject to section 1446(f) withholding for any calendar year covered by the certification period? Y/N
- D. Did QI act as a Disclosing QI (as defined in Section 2.91(E) of the QI agreement) for any payments of PTP distributions or amount realized from sales of PTP interests subject to section 1446(f) withholding for any calendar year covered by the certification period? Y/N
- E. Is QI the Compliance QI for a consolidated compliance program? Y/N
1. If yes, provide the names and QI-EINs of the members of the consolidated compliance group.
  2. If yes, did each such member of the group consent to make QI its agent for execution of a Form 872 on behalf of the member under section 10.02(B) of the QI agreement?
- F. PAIs and partnerships and trusts to which QI applied the joint account or agency option during any time within the certification period:
1. The number of PAIs with whom QI has a PAI Agreement (if none enter 0).
    - a. Provide the names and addresses of those PAIs.
    - b. Each PAI has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI) for the certification period, as required under section 4.01 of the QI agreement. Y/N
    - c. Each PAI has provided QI with either (1) its information for inclusion in QI's periodic review (as described in section 4.01(F) of the QI agreement) or (2) a certification as described in section 10.03 of the QI agreement and a periodic review report as described under section 10.06 of the QI agreement for the certification period. Y/N
  2. The number of partnerships or trusts to which QI applies the agency option (if none enter 0).
    - a. Each partnership or trust to which QI applies the agency option has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an

owner-documented FFI with respect to QI, an NFFE, or an exempt beneficial owner, or that it is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under Treas. Reg. § 1.1471-5(a), as required under section 4.06(A)(2) of the QI agreement. Y/N

- b. Each partnership or trust to which QI applies the agency option pursuant to section 4.06 of the QI agreement has provided QI with either (1) its information for inclusion in QI's periodic review (as described in section 4.06(A)(5) of the QI agreement) or (2) a certification described in section 10.03 of the QI agreement and a periodic review report as required under section 10.06 of the QI agreement for the certification period. Y/N
3. The number of partnerships or trusts to which QI applies the joint account option (if none enter 0).

***PART II: CERTIFICATION OF INTERNAL CONTROLS AND GENERAL INFORMATION —To be Completed by All QIs. Complete Either A (Certification of Effective Internal Controls) or B (Qualified Certification).***

***A. Certification of Effective Internal Controls***

If the responsible officer has identified a material failure (as defined in section 10.03(B) of the QI agreement) that QI has not corrected as of the date of this certification or an event of default (as defined in section 11.06 of the QI agreement) applicable to the certification period, QI cannot make the certification of effective internal controls under this Part A and must make the qualified certification under Part B below.

Note: If a statement in this Part II.A is not applicable to QI, the responsible officer should check the statement as if responding in the affirmative.

The responsible officer certifies to the following. Check each statement below to confirm:

1. QI has established a compliance program that meets the requirements described in section 10.02(A) or 10.02(B) (if applicable) of the QI agreement that is in effect as of the date of the certification and during the certification period.
2. Based on the information known (or information that reasonably should have been known) by the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer's certification of internal controls, QI maintains effective internal controls over its documentation, withholding, and reporting obligations under the QI agreement and according to its applicable FATCA requirements with respect to accounts for which it acts as a QI (and acts as a QI for only payments permitted under the QI agreement).
3. Based on the information known (or information that reasonably should have been known) by the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer's certification of internal controls, there are no material failures, as defined in section 10.03(B) of the QI agreement. If there are any material failures, they have been corrected as of the date of this certification and disclosed in this certification. See Part II.D.3 of this Appendix I.
4. With respect to any failure to withhold, deposit, or report, to the extent required under the QI agreement, QI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).
5. All PAIs of QI and partnerships and trusts to which QI applies the agency option have either (a) provided (or will provide, to the extent QI does not obtain a waiver under section 10.07 of the QI agreement) documentation and other necessary information for inclusion in the QI's periodic review or (b) provided the responsible officer of QI with a certification of effective internal controls described in Part II.A of Appendix I to the QI agreement and have represented to QI that there are no material failures, or, if there are such failures, they have been corrected as of the time of this certification, and the PAIs, partnerships, or trusts have disclosed any such failures to QI and provided QI with a remediation plan as described in Part II.B.3 of this Appendix I.
6. QI's policies, procedures, and processes are applied consistently to all branches covered by the QI agreement (except as otherwise required by a jurisdiction's AML/KYC procedures, as applicable).
7. If QI is acting as a QI and has assumed primary withholding responsibility with respect to payments of substitute interest (as described in section 3.03(A) of the QI agreement), QI has assumed primary withholding responsibility for all such payments covered by the QI agreement.
8. If QI is acting as a QI with respect to payments of PTP distributions or amounts realized from sales of PTP interests, QI has implemented procedures to comply with the withholding and reporting requirements for those payments, including the reporting required under Section 8.07 of the QI agreement and the procedures for collecting U.S. TINs from account holders holding PTP interests specified in section 5.01(A) of the QI agreement.
9. A periodic review was conducted for the certification period in accordance with section 10.04 of the QI agreement, with the review report submitted with this certification as required by section 10.06 of the QI agreement.
10. If in making this certification for 2023 or 2024 the QI relied on the good faith standard with respect to any section 871(m) transactions included in the periodic review, the QI disclosed the information required by section 10.01(C) of the QI agreement with this certification.

## *B. Qualified Certification*

If the responsible officer has identified a material failure (as defined in section 10.03(B) of the QI agreement) that QI has not corrected as of the date of this certification or an event of default (as defined in section 11.06 of the QI agreement) applicable to the certification period, check the applicable statements below to confirm:

1. The responsible officer (or designee) has determined that there are one or more material failures that have not been corrected as of the date of this certification or has identified an event of default with respect to QI's compliance, its PAI's compliance, or the compliance of a partnership or trust to which QI applies the agency option.
2. With respect to any failure to withhold, deposit, or report, to the extent required under the QI agreement, QI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).
3. The responsible officer (or an officer of the PAI or partnership or trust to which QI applies the agency option if the PAI or partnership or trust performs its own periodic review) will respond to any notice of default (if applicable) and has provided with this certification a remediation plan to correct each material failure or event of default that contains the following information:
  - a. A description of each material failure or event of default;
  - b. How and when the material failure or event of default was identified;
  - c. If a tax deficiency resulted from a material failure or event of default and, if so, whether the deficiency was satisfied (including interest and penalties);
  - d. The steps taken to remediate the material failure or event of default (including a timeline of steps);
  - e. The steps taken to prevent the material failure or event of default from recurring (including a timeline of the steps); and
  - f. Whether the material failure or event of default affects a prior or subsequent review period.

## *C. Amended Form 1042*

1. QI filed an amended Form 1042 to report additional tax liability based on the results of the periodic review or the findings of any other procedure, process, or review undertaken by the responsible officer in preparation for making a certification of effective internal controls or qualified certification. Y/N

## *D. Material Failures*

Check the applicable statements to confirm. If QI is a Compliance QI and identifies a material failure, it should also indicate which QI in the consolidated compliance group is associated with the material failure.

For calendar years 2023 and 2024, a material failure relevant to a QDD has not occurred unless the QDD failed to make a good faith effort to comply with the regulations under sections 871(m), 1441, 1461, and 1473 (the "section 871(m) regulations") and the relevant provisions of the QI agreement. In calendar years 2023 or 2024, a QI will not be considered to have a material failure with respect to a delta-one section 871(m) transaction unless the QI failed to make a good faith effort to comply with the section 871(m) regulations. In calendar year 2025, a QI will not be considered to have a material failure with respect to a non-delta-one section 871(m) transaction unless the QI failed to make a good faith effort to comply with the section 871(m) regulations. Notwithstanding the foregoing, QI may only rely on the good faith standard if QI discloses any section 871(m) transactions included in the review that QI believes should be subject to the good faith standard and includes a brief description of the reason QI needs to rely on the good faith standard, how QI will address it, and why the good faith standard should apply.

1. The responsible officer has determined that as of the date of the review, there are no material failures with respect to QI's compliance with the QI agreement.
2. The responsible officer has determined that as of the date of the review, there are one or more material failures with respect to QI's compliance with the QI agreement and that appropriate actions have been or will be taken to prevent such failures from reoccurring.
  - a. The following material failures were identified:
    - i. QI's establishment of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to QI's failure to comply with the QI agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, and with respect to QI that is acting as a QDD, failure to satisfy its QDD tax liability and its obligations pursuant to section 871(m) and the regulations under that section.
    - ii. QI's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of QI to take actions consistent with QI's obligations under the QI agreement, or if QI is acting as a QDD, its obligations as a QDD under the QI agreement and pursuant to section 871(m) and the regulations under that section.

- iii. A criminal or civil penalty or sanction imposed on QI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over QI's compliance with AML/KYC procedures to which QI (or any branch or office thereof) is subject and that is imposed due to QI's failure to properly identify account holders under the requirements of those procedures.
  - iv. A finding (including a finding noted in the periodic review report described in section 10.06 of the QI agreement) that, for one or more years covered by the QI agreement, QI failed to:
    - 1. Withhold an amount that QI was required to withhold under chapter 3 or 4 or under section 3406 as required under section 3 of the QI agreement or, if QI is acting as a QDD, failing to timely pay its QDD tax liability;
    - 2. Provide information sufficient for another withholding agent to perform withholding and reporting to the extent required when QI does not assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility;
    - 3. Provide allocation information as described in section 6.03(D) of the QI agreement (regarding U.S. non-exempt recipient account holders) by January 15, as required by that section when QI applies the alternative withholding rate pool procedures;
    - 4. Make deposits in the time and manner required by section 3.08 of the QI agreement or make adequate deposits to satisfy its withholding obligations or, if QI is acting as a QDD, timely satisfy its QDD tax liability, taking into account the procedures under section 9 of the QI agreement;
    - 5. Report or report accurately on Forms 1099 as required under section 8.06 of the QI agreement or provide information to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibilities;
    - 6. Report or report accurately on Forms 1042 and 1042-S under sections 7 and 8 of the QI agreement;
    - 7. Report or report accurately on Form 8966 under sections 8.04 and 8.05 of the QI agreement;
    - 8. Withhold an amount required to be withheld or report accurately with respect to U.S. source substitute dividend payments or make timely and adequate deposits of tax due with respect to such payments for which QI is a QSL and acts as a dealer or intermediary;
    - 9. Withhold an amount that QI was required to withhold on a payment of an amount realized from the sale of a PTP interest or on a PTP distribution as required under section 3 of the QI agreement or provide correct information to a withholding agent or broker when QI does not assume primary withholding responsibility for either payment under section 3.02 of the QI agreement; or
    - 10. Comply with the requirements of sections 5.01(A) and 8.07 of the QI agreement with respect to one or more account holders that are partners holding PTP interests (including for purposes of section 8.07 account holders of another intermediary when QI acts as an agent for meeting these requirements).
  - v. Other (include a detailed explanation).
3. The material failure identified in the review has been corrected by the time of this certification. Y/N/NA
    - a. If yes, describe the steps taken to correct the material failure.
  4. Did any PAI of QI inform QI that it had a material failure with respect to its agreement with QI? Y/N/NA
    - a. If yes, provide the name of the PAI, and, based on the information provided by PAI, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the timeframe for completing such steps.
  5. Did any partnerships or trusts to which QI applies the agency and/or joint account option inform QI that they had a material failure with respect to their obligations as described in the QI agreement? Y/N/NA
    - a. If yes, provide the name of the partnership or trust, and, based on the information provided by the partnership or trust, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the timeframe for completing such steps.

#### *E. Events of Default*

Check the applicable statements to confirm. If QI is a Compliance QI and identifies an event of default, it should also indicate which QI in the consolidated compliance group is associated with the event of default.

1. The responsible officer has determined that, as of the date of the review, there are no events of default with respect to QI's compliance with the QI agreement.
2. The responsible officer has determined that, as of the date of the review, there are one or more events of default as defined in section 11.06 of the QI agreement.
  - a. The following events of default were identified:
    - i. QI failed to implement adequate procedures, accounting systems, and internal controls to ensure compliance with the QI agreement;

- ii. QI underwithheld a material amount of tax that QI was required to withhold under chapter 3, section 1446(a), section 1446(f), or chapter 4, or backup withhold under section 3406 and failed to correct the underwithholding or to file an amended Form 1042 or 945 reporting, and paying, the appropriate tax;
- iii. QI made excessive refund claims;
- iv. Documentation described in section 5 of the QI agreement was lacking, incorrect, or unreliable for a significant number of direct account holders;
- v. QI filed Forms 945, 1042, 1042-S, 1099, or 8966 that were materially incorrect or fraudulent, or failed to comply materially with the requirements of section 8.07 of the QI agreement with respect to account holders that are partners holding PTP interests (including account holders of another intermediary when QI acts as an agent for meeting these requirements);
- vi. If QI is an FFI, QI failed to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;
- vii. If QI is a sponsoring entity, QI failed to materially comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;
- viii. QI failed to materially comply with the requirements of a nonqualified intermediary under chapters 3 and 61 and section 3406 with respect to any account for which QI does not act as a QI;
- ix. QI failed to perform a periodic review when required or document the findings of such review in a written report;
- x. QI failed to cooperate with the IRS on its compliance review described in section 10.08 of the QI agreement;
- xi. QI failed to inform the IRS of any change in the applicable know-your-customer rules within 90 days of the change becoming effective;
- xii. QI failed to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects QI's obligations under the QI agreement;
- xiii. QI failed to inform the IRS of any PAI of QI, as described in section 4 of the QI agreement;
- xiv. QI failed to cure a material failure identified in the qualified certification described in Part II.B of Appendix I to the QI agreement or identified by the IRS;
- xv. QI made any fraudulent statement or a misrepresentation of material fact with regard to the QI agreement to the IRS, a withholding agent, or QI's reviewer;
- xvi. The IRS determined that QI's reviewer is not sufficiently independent, as described in the QI agreement, to adequately perform its review function, and QI failed to arrange for a periodic review conducted by a reviewer approved by the IRS;
- xvii. An intermediary with which QI has a PAI agreement was in default with that agreement and QI failed to terminate that agreement within the time period specified in section 4.04 of the QI agreement;
- xviii. A partnership or trust to which QI applied the agency option was in default with that agreement and QI failed to terminate that agreement within the time period specified in section 4.06 of the QI agreement;
- xix. If QI is acting as a QDD, QI failed to timely pay a material amount of its QDD tax liability and failed to correct the underpayment and pay the appropriate tax amount; or
- xx. Other (please describe).

#### *F. Significant Change in Circumstances*

Check the applicable statements to confirm.

1. For the most recent certification period, the periodic review has not identified any significant change in circumstances, as described in section 11.04(A), (D), or (E) of the QI agreement.
2. For the most recent certification period, the periodic review has identified the following significant change(s) in circumstances:
  - a. An acquisition of all, or substantially all, of QI's assets in any transaction in which QI is not the surviving legal entity.
  - b. A material change in the applicable know-your-customer rules and procedures.
  - c. A significant change in QI's business practices that affects QI's ability to meet its obligations under the QI agreement.
  - d. If QI is acting as a QDD, QI ceases to qualify as an eligible entity, including as a result of a change in its business or regulatory status.
  - e. Other.
3. Describe any significant changes in circumstances identified in Question 2 (and, if 2.d is selected, include the date on which the QI ceased to qualify as an eligible entity).

### G. Chapter 4 Status

Complete the applicable section and check the applicable statement to confirm.

#### Participating FFIs

1. For the most recent certification period under the QI agreement, QI (or a branch of QI) has obtained status as a participating FFI and made the following certification of compliance with respect to its FFI agreement for the most recent certification period under the FFI agreement (check one). Note: You may only check N/A if, during the certification period, your chapter 4 status changed from one of the other applicable chapter 4 statuses to participating FFI or if your certification under the FFI agreement is not due as of the date of this certification.
  - a. Certification of Effective Internal Controls
  - b. Qualified Certification
  - c. N/A

#### Registered Deemed-Compliant FFIs

1. For the most recent certification period under the QI agreement, QI certified as required under Treas. Reg. § 1.1471-5(f)(1)(ii)(B) or Annex II of an applicable Model 2 IGA that it has satisfied the requirements for the deemed-compliant FFI status claimed.

#### Registered Deemed-Compliant Model 1 IGA FFIs

1. For the most recent certification period under the QI agreement, QI (or a branch of QI) has been resident in or organized under the laws of a jurisdiction that has in place a Model 1 IGA with the United States (or in the case of a branch of QI, the branch operates in the jurisdiction) and has met the requirements under the IGA to be treated as a deemed-compliant FFI.

### ***PART III. WAIVER OF PERIODIC REVIEW***

**Provide the below information for the most recent calendar year within the certification period. For calendar years 2023 and 2024, exclude QI's QDD activities from the below information. Also provide the information shown in Appendix III of the QI agreement for each year of the certification period.**

**For Parts B.1 through 6, the information reported must not reflect any curing that is initiated, by contacting an account holder for revised documentation, after the last year covered by the periodic certification.**

**Note: In order to be eligible for a waiver, QI must be able to confirm all of the eligibility requirements in Part A are met.**

For purposes of this Part, "account" means, unless otherwise specified, any account for which QI acts as a QI.

- A. Eligibility for Waiver (check each statement to confirm)
  1. QI is an FFI and, for calendar years after 2024, is not acting as a QDD;
  2. QI is not part of a consolidated compliance program;
  3. For each calendar year covered by the certification period, the reportable amounts received by QI do not exceed \$5 million (including the amount of PTP distributions subject to withholding under chapter 3 or 4);
  4. QI timely filed its Forms 1042, 1042-S, 945, 1099, and 8966, (or the reporting otherwise required under an applicable IGA), as applicable, for all calendar years covered by the certification period;
  5. QI made all periodic certifications and reviews required by sections 10.02 and 10.03 of the QI agreement, as well as all certifications required pursuant to QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.
- B. Information required (provided for the most recent calendar year within the certification period)
  1. The total number of accounts
    - a. Total number of direct account holders
      - i. Foreign persons
      - ii. U.S. exempt recipients
      - iii. U.S. non-exempt recipients
      - iv. Intermediaries and flow-through entities
    - b. Total number of indirect account holders
      - i. Foreign persons
      - ii. U.S. exempt recipients

- iii. U.S. non-exempt recipients
  - iv. Intermediaries and flow-through entities
2. The total number of U.S. account holders that received reportable payments.
  3. The total number of non-U.S. account holders that received reportable amounts.
  4. The total number of such accounts that have valid documentation.
  5. The total number of accounts that have no documentation or invalid documentation.
  6. The total number of Forms 1042-S filed by QI.
  7. Total of reportable amounts received for non-U.S. accounts.
  8. Total of reportable payments received for U.S. accounts.
  9. Total PTP distributions received by QI subject to withholding under §1446(a) (regardless of whether paid to a U.S. partner).
  10. Total of amounts realized received by QI from sales of PTP interests.
  11. The aggregate amount of tax withheld under chapter 3 and 4 (by QI or QI's withholding agent(s), including withholding under chapter 3 and 4 on PTP distributions).
  12. The aggregate amount of tax withheld under sections 1446(a) and (f) (by QI or QI's withholding agent(s)).
  13. The total number of Forms 1099 filed by QI.
  14. The aggregate amount of backup withholding under section 3406 by QI or QI's payor(s).

***PART IV. PERIODIC REVIEW: QI FACTUAL INFORMATION—To be completed by all QIs that have not applied for or obtained a waiver.***

**If QI acts solely as a QDD and has no other QI activities, QI is not required to complete Part IV.B through F.**

**Note: For completing sections C, D, E, F and G of this Part IV, QI should exclude any information with respect to payments (and related withholding) applicable to income code 27 (PTP distributions subject to section 1446(a)), income code 57 (amounts realized under section 1446(f), including when associated with a PTP distribution), and income code 58 (PTP distribution with undetermined income) (collectively, “PTP-related payments”). See Form 1042-S for these income codes. A PTP-related payment includes a payment included in any of these codes made to an account holder that is a U.S. person and otherwise without regard to whether withholding is required on the payment. PTP-related payments are covered in Part VII of this Appendix I**

*A. General Information*

1. Did QI use an external reviewer to conduct any portion of its periodic review? Y/N
2. Provide below the information for external reviewer(s). You may list up to 2 external reviewers.
  - a. External Reviewer 1 Information:
  - b. External Reviewer 2 information:
3. Did QI use an internal reviewer to conduct any portion of its periodic review? Y/N
  - a. If yes, provide a brief description of the internal reviewer, such as their department and other roles and responsibilities with respect to QI's QI activities.
4. Calendar year reviewed for periodic review.

*Caution: On the due date for reporting the factual information relating to the periodic review (provided in section 10.04 of the QI agreement), there must be 15 or more months available on the statutory period for assessment for taxes reportable on Form 1042 of the calendar year for which the review was conducted, or the QI must submit, upon request by the IRS, a Form 872, Consent to Extend the Time to Assess Tax, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 12.06 of the QI agreement.*

*B. General Information on Accounts and Review of Accounts*

For Parts B through G, while the curing of documentation is permissible, unless otherwise indicated, the information reported shall be based on the periodic review and should not take into account the curing of documentation that resulted from the periodic review. For purposes of this Part, “account” means, unless otherwise specified, any account for which QI acts as a QI. However, do not include accounts for purposes of Parts C through F that are reportable in Parts V through VII of this Appendix I.

1. Did QI assume primary chapters 3 and 4 withholding responsibility for any accounts for the calendar year provided in Question 4 in Part A, above? Y/N

2. Did QI assume primary Form 1099 reporting and backup withholding responsibility for any accounts for the calendar year provided in Question 4 in Part A, above? Y/N
3. Total accounts reviewed for periodic review.
4. Did QI use a statistical sampling method in conducting the review of its accounts? Y/N/NA
  - a. If yes, was it the safe harbor method under Appendix II to the QI agreement?
  - b. If no, describe the method used.
5. Total accounts reviewed that received reportable amounts.

If you used the safe harbor method set forth in Appendix II, complete the following table:

	Stratum A	Stratum B	Stratum C	Stratum D
Number of Accounts in the Population				
Number of Accounts in the Sample				
Total Underwithholding in the Sample Post-Curing				

*C. Documentation*

1. Total accounts reviewed held by direct account holders.
2. Total accounts reviewed held by indirect account holders.
3. Total accounts reviewed with valid documentation.
4. Total accounts reviewed with invalid documentation or no documentation.
  - a. Total pre-curing:
  - b. Total post-curing:
5. Total accounts reviewed with invalid documentation or no documentation for which valid documentation or additional valid documentation was obtained after the review.
6. Total accounts reviewed for which treaty benefits were claimed.
7. Total accounts reviewed for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI agreement).
  - a. Total pre-curing:
  - b. Total post-curing:
8. Total accounts reviewed held by U.S. non-exempt recipient account holders.
9. Total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has obtained a valid Form W-9.
10. If QI has not assumed primary Form 1099 reporting and backup withholding responsibility, total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has transmitted Forms W-9 to a withholding agent.
11. Total accounts reviewed assigned to chapter 3 or chapter 4 withholding rate pools.
12. Total accounts reviewed assigned to chapter 3 or chapter 4 withholding rate pools where QI did not correctly report withholding rate pool information to a withholding agent.
13. Total accounts reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable IGA) (if applicable).
14. Total accounts reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable IGA) for which QI has obtained a valid Form W-9 or, if applicable, a valid self-certification.

*D. Withholding*

1. The aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S.
2. Number of accounts for which amounts were withheld under chapter 3.
3. The aggregate amount reported as withheld under chapter 4 by QI on Forms 1042-S.
4. Number of accounts for which amounts were withheld under chapter 4.
5. The aggregate amount reported as withheld by QI on Forms 1099.
6. Number of accounts for which amounts were backup withheld under section 3406.



7. Additional withholding required under chapter 3 based on results of periodic review.
  - a. Total pre-curing:
  - b. Total post curing:
8. Additional withholding required under chapter 4 based on results of periodic review.
  - a. Total pre-curing:
  - b. Total post-curing:
9. Additional backup withholding required under section 3406 based on results of periodic review.
  - a. Total pre-curing:
  - b. Total post-curing:
10. The aggregate amount of deposits made in accordance with section 3.08 of the QI agreement.
11. Number of partnerships or trusts to which the joint account treatment of section 4.05 of the QI agreement was applied.
  - a. Total accounts to which joint account treatment applied for which appropriate documentation was obtained and the appropriate rate of withholding was applied.
  - b. Total accounts to which joint account treatment applied for which appropriate documentation was obtained and the appropriate rate of withholding was not applied.
  - c. Total accounts to which joint account treatment applied for which appropriate documentation was not obtained and the appropriate rate of withholding was not applied.
    - i. Total pre-curing:
    - ii. Total post-curing:
  - d. Aggregate amount of underwithholding resulting from the appropriate rate of withholding not being applied with respect to an account to which the joint account treatment applied.
    - i. Total pre-curing:
    - ii. Total post-curing:

*E. Reconciliation of Reporting on Payments of Reportable Amounts*

1. The aggregate amount reported paid to QI (as a recipient) on all Forms 1042-S issued to QI.
2. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 4 reporting pools (other than the U.S. payee pool) (including a chapter 4 reporting pool of a PAI or a partnership or trust to which QI applies the agency option).
3. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 4 reporting pool-U.S. payee pool.
4. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 3 reporting pools (including chapter 3 reporting pools of a PAI or partnership or trust to which QI applies the joint account or agency option).
5. The aggregate amount reported paid by QI on Forms 1042-S to other QIs (excluding QIs that are acting as QDDs), QSLs, and WPs and WTs as a class.
6. The aggregate amount reported paid by QI on Forms 1042-S to QIs that are acting as QDDs.
7. The aggregate amount reported paid by QI on Forms 1042-S to participating FFIs, registered deemed-compliant FFIs, and registered deemed-compliant Model 1 IGA FFIs that are intermediaries or flow-through entities as a class and with respect to their chapter 4 reporting pools (excluding amounts referenced in Questions 5 and 6 directly above).
8. The aggregate amount reported paid by QI on Forms 1042-S to indirect account holders (not included in Question 2 or 7 above and including an account holder of an intermediary or flow through entity reported by QI as made to an unknown recipient on Form 1042-S).
9. The aggregate amount subject to reporting on Form 1042-S paid by QI to U.S. non-exempt recipients as a class not includable in a chapter 4 withholding rate pool of QI.
10. The aggregate amount subject to reporting on Form 1042-S paid by QI to U.S. exempt recipients as a class not includable in a chapter 4 withholding rate pool of QI.
11. The aggregate amount paid by QI to its direct account holders (including account holders of any PAI or partner, beneficiary, or owner of a partnership or trust to which QI applies the joint account or agency option) that requested individual Form(s) 1042-S.
12. Total of questions 2 through 11.
13. The amount of variance (if Question 1 minus Question 12 is other than 0) and attach an explanation for any variance.

*F. Reconciliation of Withholding on Reportable Amounts*

1. The aggregate amount reported as withheld by another withholding agent on Forms 1042-S issued to QI (as a recipient).
2. The aggregate amount reported by QI as withheld by QI on Forms 1042-S filed by QI.
3. The total withholding reported by QI on Forms 1042-S.
4. Amount of variance (if question 1 plus question 2 does not equal question 3) and attach an explanation for any variance.
5. The aggregate amount reported by QI as amounts it backup withheld on Forms 1099.

6. If QI did not assume primary withholding responsibility and amounts are entered for questions 2 or 5, attach an explanation of any underwithholding that occurred by the withholding agent.
7. If QI assumed primary withholding responsibility and an amount is entered for question 1, attach an explanation of the amount withheld by others.
8. The aggregate amount of any collective claims for refund or credit made by QI.
9. For question 8 directly above, the amount of credit or refund claimed by QI for account holders not supported by appropriate documentation for reduced withholding.

*G. Other Information (including reporting of U.S. account holders).*

1. The aggregate number of Forms 1099 QI failed to file (when required) with respect to account holders receiving reportable payments.
2. The aggregate number of Forms 8966 (or analogous forms under an applicable IGA) that QI failed to file under its applicable requirements as an FFI (for accounts receiving reportable payments).
3. The number of Forms 1099 and Forms 8966 (or analogous forms under an applicable IGA) that QI filed but that failed to include accurate information on the income and other information required.
4. If QI acted as a QSL or otherwise assumed primary withholding responsibility for a payment of U.S. source substitute dividends as an intermediary, indicate whether QI has a policy in effect to assume primary withholding responsibility for all such payments.  
Y/N

***Part V. Qualified Derivatives Dealers***

[RESERVED]

***Part VI. Substitute Interest***

**Complete only if QI has assumed primary withholding responsibility for payments of substitute interest (as described in section 3.03(A) of the QI agreement).**

*A. General Information*

1. Total number of accounts receiving substitute interest payments.
2. Total number of accounts receiving substitute interest reviewed as part of the periodic review.

*B. Documentation*

1. Total accounts reviewed with valid documentation.
2. Total accounts reviewed with invalid documentation or no documentation for which documentation or additional documentation was obtained after the initial review.
3. Total accounts reviewed for which treaty benefits were claimed.
4. Total accounts reviewed for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI agreement).
5. Total accounts reviewed held by U.S. non-exempt recipient account holders.
6. Total accounts reviewed held by U.S. non-exempt recipient account holders for which QI has obtained a valid Form W-9.

*C. Withholding*

1. The aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S with respect to substitute interest payments.
2. Number of accounts for which amounts were withheld under chapter 3 with respect to substitute interest payments.
3. The aggregate amount reported as withheld under chapter 4 by QI on Forms 1042-S with respect to substitute interest payments.
4. Number of accounts for which amounts were withheld under chapter 4 with respect to substitute interest payments.
5. Additional withholding required under chapter 3 based on results of periodic review.
6. Additional withholding required under chapter 4 based on results of periodic review.
7. Aggregate amount reported as withheld on Forms 1099 on reportable payments (including reportable amounts) subject to backup withholding.

8. Additional backup withholding required based on results of periodic review.
9. The aggregate amount of deposits made in accordance with section 3.08 of the QI agreement with respect to substitute interest payments.

*D. Reporting*

1. Total amount of interest or substitute interest payments received for which QI represented itself as assuming primary withholding responsibility.
2. Aggregate amount of substitute interest payments made.
3. Total amount of payments in Question 2 that were reported on Forms 1099.
4. Total amount of payments in Question 2 that were amounts subject to chapter 3 reporting reported on Form 1042-S.
5. Total amount of payments in Question 2 that were amounts subject to chapter 4 reporting reported on Form 1042-S.
6. Aggregate amount of any claims for credit or refund made by QI with respect to payments of substitute interest.

**Part VII. PTP-Related Payments**

**Complete this Part only to the extent QI acts as a QI with respect to PTP-related payments (payments included in each below income code shown on Form 1042-S, but including when made to an account holder that is a U.S. person and otherwise without regard to whether withholding is required on the payment). All of the information for this Part VII relates only to PTP-related payments, unless indicated otherwise. For amounts subject to chapter 3 or 4 withholding attributable to a PTP distribution and account documentation reviewed with respect to those payments (and reporting of underwithholding on those payments), report those amounts in Part IV of this Appendix I.**

*A. General Information*

1. Total number of accounts that received a PTP-related payment applicable to each below income code.
  - a. 27:
  - b. 57:
  - c. 58:
2. Total number of accounts reviewed as part of the periodic review that received a PTP-related payment applicable to each below income code.
  - a. 27:
  - b. 57:
  - c. 58:
3. Total number of accounts reviewed as part of the periodic review that received a PTP-related payment for which the procedures of Section 8.07 of the QI agreement were not satisfied with respect to the partner associated with the account.

*B. Disclosing QI*

1. Did QI act as a Disclosing QI for PTP-related payments for the periodic review year? Y/N  
If yes, complete the following questions with respect to payments received by QI acting as a Disclosing QI. Otherwise, go to the next section of this Part VII.
2. Total number of accounts that received a PTP-related payment applicable to each below income code.
  - a. 27:
  - b. 57:
  - c. 58:
3. Total number of accounts reviewed as part of the periodic review that received a PTP-related payment applicable to each below income code.
  - a. 27:
  - b. 57:
  - c. 58:
4. Total number of accounts for which the Disclosing QI withheld on a PTP-related payment to comply with Section 3.02(C) of the QI agreement.
5. Total amount of withholding by the Disclosing QI to comply with Section 3.02(C) of the QI agreement.

### *C. QI Assuming Primary Withholding Responsibility*

1. Did QI assume primary withholding responsibility for any PTP-related payments for the periodic review year? Y/N  
If yes, complete the following questions for payments for which QI assumed primary withholding responsibility. Otherwise, go to the next section of this Part VII.
2. Total number of accounts that received a PTP-related payment applicable to each below income code.
  - a. 27:
  - b. 57:
  - c. 58:
3. Total number of accounts reviewed as part of the periodic review that received a PTP-related payment applicable to each below income code.
  - a. 27:
  - b. 57:
  - c. 58:
4. Total number of accounts holding a PTP interest for which QI determined the applicability of the “10-percent exception” of §1.1446(f)-4(b)(3) for one or more PTP-related payments.

### *D. QI Providing Withholding Rate Pools*

1. Did QI provide withholding rate pool information to a withholding agent for any PTP-related payments for the periodic review year? Y/N  
If yes, complete the following questions with respect to payments for which QI provided withholding rate pool information. Otherwise, go to the next section of this Part VII.
2. Total number of accounts that received a PTP-related payment applicable to each below income code.
  - a. 27:
  - b. 57:
  - c. 58:
3. Total number of accounts reviewed as part of the periodic review that received a PTP-related payment applicable to each below income code.
  - a. 27:
  - b. 57:
  - c. 58:

### *E. Documentation*

Note: Reporting for this Part E should include, in addition to each QI Account, partners in a partnership certifying to a modified amount realized for purposes of section 1446(f) and grantors and owners of a trust receiving an amount subject to withholding under section 1446(a) or (f).

1. Total accounts reviewed with valid documentation with respect to PTP-related payments for purposes of section 1446(a) or (f) (as applicable).
2. Total accounts reviewed with respect to PTP-related payments for which an account holder’s (or partner’s) U.S. status was incorrectly determined by QI for purposes of section 1446(a) or (f) (as applicable).
3. Total accounts reviewed with respect to PTP-related payments for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee’s entitlement to treaty benefits for purposes of section 1446(a) or (f) (as applicable, including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI agreement).
4. Total number of accounts reviewed for which QI incorrectly determined the applicability of the “10-percent exception” of §1.1446(f)-4(b)(3) for one or more PTP-related payments (for a QI assuming primary withholding responsibility only).
5. Total accounts reviewed with respect to PTP-related payments for which the invalid documentation was otherwise relied on by QI for purposes of section 1446(a) or (f) (as applicable) (excluding accounts described in sections E.2 through E.4 directly above).
6. Total accounts reported in this section E for which the documentation was invalid solely due to the absence of a U.S. TIN.

### *F. Withholding*

1. The aggregate amount reported as withheld by another withholding agent on Forms 1042-S issued to QI (as a recipient) for payments of PTP distributions under income code 27.

2. The aggregate amount reported by QI as withheld by QI on Forms 1042-S for payments of PTP distributions under income code 27.
3. The total withholding reported by QI on Forms 1042-S for payments of PTP distributions under income code 27.
4. Amount of variance (if question 1 plus question 2 does not equal question 3) and attach an explanation for any variance.
5. The aggregate amount reported as withheld by another withholding agent on Forms 1042-S issued to QI (as a recipient) for payments of amounts realized from the sale of PTP interests under income code 57.
6. The aggregate amount reported by QI as amounts it withheld on Forms 1042-S for payments of amounts realized from the sale of PTP interests under income code 57.
7. The total withholding reported by QI on Forms 1042-S for payments of amounts realized from the sale of PTP interests under income code 57.
8. Amount of variance (if question 5 plus question 6 does not equal question 7) and attach an explanation for any variance.
9. The aggregate amount reported as withheld by another withholding agent on Forms 1042-S issued to QI (as a recipient) for payments of PTP distributions under income code 58.
10. The aggregate amount reported by QI as amounts it withheld on Forms 1042-S for payments of PTP distributions under income code 58.
11. The total withholding reported by QI on Forms 1042-S for payments of PTP distributions under income code 58.
12. Amount of variance (if question 9 plus question 10 does not equal question 11) and attach an explanation for any variance.
13. Additional withholding required under section 1446(a) based on the results of the periodic review for payments of PTP distributions reportable on Form 1042-S under income code 27.
  - a. Total pre-curing:
  - b. Total post-curing:
14. Additional withholding required under section 1446(f) based on the results of the periodic review for payments of amounts realized from the sale of PTP interests reportable on Form 1042-S under income code 57.
  - a. Total pre-curing:
  - b. Total post-curing:
15. Additional withholding required under section 1446(a) based on the results of the periodic review for payments of PTP distributions reportable on Form 1042-S under income code 58.
  - a. Total pre-curing:
  - b. Total post-curing:

*G. Reconciliation of Reporting on PTP-Related Payments*

1. The aggregate amount reported as paid to QI on all Forms 1042-S issued to QI (as a recipient) with income code 27.
2. The aggregate amount reported as paid by QI on all Forms 1042-S filed by QI with income code 27.
3. Amount of variance (if question 1 does not equal question 2) and attach an explanation for any variance.
4. The aggregate amount reported as paid to QI on all Forms 1042-S issued to the QI (as a recipient) with income code 57.
5. The aggregate amount reported as paid by QI on all Forms 1042-S filed by QI with income code 57.
6. Amount of variance (if question 4 does not equal question 5) and attach an explanation for any variance.
7. The aggregate amount reported as paid to QI on all Forms 1042-S issued to QI (as a recipient) with income code 58.
8. The aggregate amount reported as paid by QI on all Forms 1042-S filed by QI with income code 58.
9. Amount of variance (if question 7 does not equal question 8) and attach an explanation for any variance.
10. The aggregate amount paid to QI for which QI acted as a Disclosing QI (and was therefore reported on Form 1042-S in Boxes 15a through 15i).
11. The aggregate amount paid by QI to its account holders for which QI acted as a Disclosing QI (as determined from QI's books and records).
12. Amount of variance (if question 10 does not equal question 11) and attach an explanation for any variance.

*H. Other Reporting.* Report the number of account holders for which QI did not properly apply the procedures of section 8.07 of the QI agreement.

## *APPENDIX II*

### **Section I. Background.**

To the extent provided in section 10.05 of the QI agreement and this Appendix II, the reviewer is permitted to use a sampling methodology to perform the periodic review. This Appendix II includes safe harbor procedures covering basic sample design parameters and methodologies, including sample size, strata allocation, and projection. Except as otherwise provided, the terms used in this Appendix II are as defined in the QI agreement.

Generally, sampling should only be used whenever an examination of all accounts within a particular class of accounts would be prohibitive due to time or expense. If it is reasonable to examine all accounts in connection with a particular part of the periodic review, sampling techniques should not be used. Sampling should be used only if there are more than 60 accounts to review. If any accounts of QI held by PAIs (“PAI Accounts”) or accounts of QI held by partnerships or trusts utilizing the agency option (“Agency Accounts”) are also included in QI’s review (because the PAI or the partnership or trust did not perform its own periodic review), the PAI Accounts or Agency Accounts should be included in the sample of accounts for which QI acts as a QI (“QI Accounts”) by adding additional strata through replication of the strata prescribed in section II.A.3 of this Appendix II, as applicable. For purposes of QI’s periodic review, a QI Account is referred to as a “sample unit” (and collectively as the “sample”) with respect to each review. The sampling methodology employed envisions a documentation review (as prescribed in section 10.05(A) of the QI agreement) requiring review of all selected sample units and a review of (1) withholding rate pool classifications (as prescribed in section 10.05(B) of the QI agreement), (2) withholding responsibilities (as prescribed in section 10.05(C) of the QI agreement), and (3) return filing and information reporting (as prescribed in section 10.05(D) of the QI agreement) that require review of a subset (a “spot check” under section II.B.1 of this Appendix II) of the sample units reviewed in the documentation review.

The statistical sampling methodologies used in this Appendix II are not intended to be and cannot be used for any other tax purpose. QI may use another sampling technique provided it documents its parameters and methodologies for the IRS to review, as described in section 10.05 of the QI agreement, and adheres to the principles of Rev. Proc. 2011-42, 2011-37 I.R.B. 318. The IRS will determine if a projection of underwithholding identified utilizing a statistical sampling method is required in accordance with section III.C of this Appendix II.

A reviewer may request approval to modify the safe harbor methodology or approval of another sampling methodology in order to select more than one sample or to use multistage, cluster, or other sampling methodologies including additional stratifications. To obtain IRS approval, contact the Financial Intermediaries Program in accordance with section 12.06 of the QI agreement.

The safe harbor in this Appendix II applies to all periodic reviews starting with calendar year 2023.

### **Section II. Safe Harbor Methodology.**

#### **A. DOCUMENTATION REVIEW**

##### *1. Population.*

(a) *Population of QI Accounts.* The population of QI Accounts consists of all accounts described below.

- (1) All accounts held by U.S. persons (or account holders presumed to be U.S. persons) that received a reportable payment;
- (2) All accounts held by non-U.S. persons (or account holders presumed to be non-U.S. persons) that received a reportable amount;
- (3) All accounts that received a PTP distribution; and
- (4) All accounts that received an amount realized from the sale of a PTP interest.

Additionally, if a combined periodic review is conducted, the population of QI Accounts will include the above accounts of both the predecessor QI and successor QI. See section 11.05(B) of the QI agreement (describing the requirements for a combined periodic review).

## 2. Sample Sizes for Documentation Review.

(a) *Sample Size Calculations.* The sample size for each sample is the lesser of (1) the number of sample units determined using the sample formula in section II.A.2(b) of this Appendix II, or (2) 25 percent of the total number of sample units in the population. However, in determining the sample size, the reviewer must adhere to the guidelines for minimum stratum sample size in sections II.A.3 and II.A.4 of this Appendix II. This may result in a sample size greater than the sample size resulting from using the formula in section II.A.2(b) of this Appendix II. The minimum sample size of any sample shall not be less than 60. A sample size larger than calculated under this section may be used without contacting the Financial Intermediaries Program.

This sample size calculation is determined without regard to any required certainty stratum (e.g., the strata referenced in section II.A.3(a) of this Appendix II), or a sample used in a combined periodic review for a predecessor QI. In these instances, the number of accounts to be included in the certainty strata are in addition to the sample size calculation detailed in this section. A certainty stratum is a stratum in which all sample units are reviewed.

If PAI Accounts or Agency Accounts have been added to the sample of QI Accounts because the PAI or partnership or trust did not perform its own periodic review, a separate sample size calculation should also be performed for the PAI Accounts or the Agency Accounts as if they were part of a separate QI sample. If multiple samples are used, the sample size for each sample (including for any additional PAI Accounts or Agency Accounts) is calculated independently.

(b) *Sample Formula.* While the following formula, when used with the variable values stated below, is intended not to result in a sample size greater than 321, the total sample size for a single sample may exceed 321 in certain instances such as when the sample includes (1) PAI Accounts, (2) Agency Accounts, (3) accounts for which QI used the joint account option, (4) accounts in a certainty strata, or (5) accounts of a predecessor QI and successor QI in a combined review. Sample size may also exceed 321 when the reviewer uses “optional further stratification by dollar amounts” (see section II.A.6 of this Appendix II). Additionally, the reviewer may, in its discretion, have a sample population larger than that resulting from the safe harbor method.

The number of sample units to be reviewed is determined using the sample formula as follows:

$$\text{Sample Size} = \frac{\frac{t^2 PQ}{d^2}}{1 + \frac{1}{N} \frac{(t^2 PQ - 1)}{d^2}}$$

where  $t = 1.645$  (confidence coefficient at 95 percent one-sided)

$P = 5$  percent (error rate) for the QI account sample

$Q = 1 - P$

$d = 2$  percent (precision level)

$N =$  total population

## 3. Strata.

*Sample of QI Accounts.* The reviewer must segregate all QI Accounts into the following strata. While segregating accounts, steps should be taken to ensure all partnerships and trusts for which QI has utilized the joint account option are placed into the appropriate direct account stratum (stratum b), while the underlying partners, beneficiaries, or owners of the partnerships or trusts are excluded from the indirect stratum (stratum d). Such underlying accounts will be selected for review in accordance with section II.A.7 of this Appendix II.

Further substratification by dollar amounts may be used in accordance with section II.A.6 of this Appendix II.

The strata are as follows:

(a) A stratum of the thirty top dollar value accounts as determined by the total of the PTP distributions and amounts realized from sales of PTP interests paid to an account. All accounts in this stratum are to be reviewed for purposes of section 10.05(A) of the QI agreement. After removing these accounts, further accounts are to be selected randomly from the below strata in accordance with the sample size calculation specified in Section II.A.2 of this Appendix II and the allocation method specified in Section II.A.4 of this Appendix II;

- (b) A stratum of all accounts that are held by direct account holders that are not U.S. non-exempt recipients;
- (c) A stratum of all accounts that are held by direct account holders that are U.S. non-exempt recipients; and
- (d) A stratum of all accounts held by indirect account holders.

If a sample is used in a combined periodic review, certainty strata containing accounts from the predecessor QI replicating all strata described above must be formed. Each stratum must contain the fifteen top dollar value accounts of the predecessor QI as measured by the total of reportable amounts paid to foreign recipients, reportable payments paid to U.S. recipients, total PTP distributions paid to an account, and total amounts realized from sales of PTP interests paid to an account. Every sample unit determined under the preceding sentence must be reviewed. The remainder of the accounts of the predecessor QI, along with all the accounts of the successor QI, must be placed into strata (a) through (d).

#### *4. Allocation of Sample Size to Each Stratum.*

The reviewer must allocate the number of sample units for each sample (including for any PAI Accounts or Agency Accounts added to the sample of QI Accounts) independently of the other samples. The reviewer must allocate the number of sample units in the sample determined under section II.A.2 of this Appendix II to each of the three randomly selected strata (that is, strata b, c, and d) described in section II.A.3 of this Appendix II. The sample units are allocated by multiplying the number of sample units in the sample, as determined under section II.A.2 of this Appendix II, by a fraction, the numerator of which is the total number of sample units in the stratum and the denominator of which is the total number of sample units in the population. The minimum number of sample units in any stratum must be the lesser of 60 sample units or the number of sample units in the stratum. If the allocation of sample units to a stratum using the above method results in a sample size of a stratum that is less than 60 and less than the actual number of sample units in the stratum, the minimum allocation to that stratum is the total number of sample units in the stratum. In this case, the difference between number of accounts sampled using the above-referenced fraction and the actual number of accounts sampled can be used to reduce the number of accounts sampled in the other two randomly selected strata on a pro rata basis; however, this reallocation cannot be used to reduce the sample size of any stratum below 60. Additionally, in instances where there are less than 60 accounts in a stratum population it is not necessary to reallocate the difference between 60 and the actual number of accounts in a stratum population over the other strata; and, therefore, such an instance should not increase the total sample size.

#### *5. Random Number Generator.*

The reviewer must select for the documentation review under section 10.05(A) of the QI agreement sample units from each non-certainty stratum identified in section II.A.3 of this Appendix II by using a random number generator. Random numbers should be drawn separately for each sample (including for any PAI Accounts or Agency Accounts added to the sample of QI Accounts) including the use of separate seeds. Information regarding the random number generator used must be included in the records as required in section III.D of this Appendix II. This information must be sufficient to allow the IRS to replicate the random numbers as well as to allow the reviewer to continue the sequences of randomly generated numbers if it is determined additional sample units need to be reviewed. This information must include the name and version of the random number generator, the seed numbers used or generated, specification of any options selected, and the computer equipment on which the random number generator was run.

#### *6. Optional Further Stratification by Dollar Amounts.*

For each sample (including for any PAI Accounts or Agency Accounts added to the sample of QI Accounts), the reviewer may further stratify by dollar amounts for that sample without submitting a request for approval to the Foreign Intermediaries Program when the reviewer is otherwise selecting the sample in accordance with this Appendix II. Reportable amounts for foreign recipients, reportable payments for U.S. recipients, PTP distributions, and amounts realized from sales of PTP interests are to be considered in the substratification. If the reviewer chooses to substratify under this section, the reviewer must comply with the following rules:

- (a) A certainty stratum consisting of sample units that have received payments of the highest dollar amounts during the review year must be created. This stratum shall consist of 30 accounts;
- (b) The remaining strata shall be randomly selected to contain approximately equal amounts in each substratum; and
- (c) The minimum stratum size shall not be less than 30 sample units.



*7. Determining Rate of Withholding for Partnerships and Trusts for Which the QI has Applied the Joint Account Option.*

When reviewing documentation of partners, beneficiaries, or owners of a partnership or trust to which QI has applied the joint account option to determine the rate of withholding QI should have applied to the partnership or trust, the reviewer may limit the review to the number of partners, beneficiaries, or owners by referring to the table below. The underlying partners, beneficiaries, or owners in the partnership or trust must be selected randomly.

Number of partners, beneficiaries, or owners	/ Number to be reviewed
0 – 10	All
11 – 14	10
15 – 19	13
20 – 24	16
25 – 29	18
30 – 34	20
35 – 39	21
40 – 49	22
50 – 74	24
75 – 99	26
100 – 199	27
200 – 499	29
500 – 4,999	31
> 4,999	32

*8. Determining Rate of Withholding for Partnerships and Trusts for Section 1446(a) and (f) Withholding.*

When the status of a partner in a partnership or a grantor or owner of a trust is relevant to determining the rate of withholding for a partnership or trust receiving an amount subject to withholding under section 1446(a) or (f), the partners, grantors, or owners to be reviewed must be determined randomly, with the number of partners, grantors or owners limited by reference to the table provided in section II.A.7 of this Appendix II.

**B. WITHHOLDING RATE POOL, WITHHOLDING RESPONSIBILITIES, AND RETURN FILING AND INFORMATION REPORTING REVIEWS (SPOT CHECK)**

*1. Selection of Accounts for Review.*

For purposes of reviewing the sampled accounts for compliance with withholding rate pool requirements, withholding responsibilities, and return filing requirements under sections 10.05(B) through 10.05(D) of the QI agreement, the reviewer must perform a spot check review (spot check) of accounts from every stratum in the sample that failed the documentation review under section 10.05(A) of the QI agreement, taking into account the applicable presumption rules of section 5.13 of the QI agreement. With respect to the accounts described in the preceding sentence, the reviewer may exclude from the spot check any account for which the QI did not apply a reduced rate of withholding.

To the extent that the number of sample units selected under the preceding paragraph (or selected from the population, if the reviewer has not used statistical sampling) in any stratum is less than 30, the reviewer must also select for the spot check (in the order selected by the random number generator under section II.A.5 of this Appendix or, if the reviewer has not used statistical sampling, in the order used by the QI for its record keeping) an additional number of sample units drawn from that stratum that equal the difference between 30 and the number of sample units from the sample in that stratum.

If applicable, the reviewer must randomly select for spot check 20 accounts in stratum (a) under section II.A.3 of this Appendix II. Additionally, every account in the certainty stratum for the predecessor QI in a combined periodic review must be selected for spot check.

When performing the spot check, if the reviewer determines underwithholding occurred on a payment to an account, all payments to that account must be considered when calculating total underwithholding for that account.

### **Section III. Additional Requirements Regarding the Use of Sampling**

#### **A. DOCUMENTATION OF SAMPLE PLAN**

The reviewer should provide in its periodic report the information described in Rev. Proc. 2011-42, Appendix (A), Sampling Plan Standards, and Appendix (B), Sampling Documentation Standards, as applicable. Additionally, originally recorded payment and withholding amounts, as well as the amount that should have been withheld and the amount actually withheld as determined by the compliance review, should be retained for every sample unit, along with additional information required by this Appendix II.

#### **B. DETERMINATION OF UNDERWITHHOLDING**

If the reviewer determines that underwithholding has occurred with respect to the sampled accounts, QI must notify the Financial Intermediaries Program within 30 days of the completion of the periodic review of any underwithholding identified in the review, as provided in section 12.06 of the QI agreement, and the amount of any underwithholding that remains after any curing. Curing for purposes of the preceding sentence is limited to curing performed after the selection of the sample. QI shall report and pay, in accordance with the requirements of the QI agreement, the actual underwithheld tax without regard to projection, as determined at the end of the 30-day period. The QI may continue to cure up to 60 days after the date on which the IRS proposes a deficiency with respect to the underwithholding.

#### **C. PROJECTION**

1. When the IRS reviews QI's periodic certification, it will determine if a projection of underwithholding is required based on QI's periodic review report, factual information provided, and other relevant information. If a projection is required, the IRS will determine the total amount of underwithheld tax by projecting the underwithholding over the entire stratum of similar accounts using a projection method that is consistent with the sampling method used on a post cure basis. For example, if a stratified random sampling method permitted in this Appendix II has been used, the IRS may determine the total amount of underwithheld tax by first determining the amount of underwithheld tax within each stratum by projecting actual underwithholding within a stratum over the entire stratum, and then totaling underwithholding over all strata as follows:

- (a) Divide the amount of underwithholding within each stratum by that stratum's sample size;
- (b) Multiply the result in (a) by the total number of accounts in that stratum; and
- (c) Total the results of (b) for all strata.

2. The following is an example of how underwithholding may be projected over the population to determine a deficiency in tax with respect to QI:

A QI has QI designated accounts as follows:

Stratum B contains 1025 accounts

Stratum C contains 1025 accounts.

Stratum D contains 0 accounts.

Following the safe harbor sampling methodology in this Appendix II, the total sample size is 278 as allocated below:

Stratum B sample size = 139.

Stratum C sample size = 139.

Stratum D sample size = 0.

Stratum B has 10 accounts with documentation insufficient to support the reduced rate of withholding applied by the QI for total underwithholding of \$2,500. The QI subsequently cures the documentation for 4 of the accounts leaving 6 uncured accounts for a total remaining underwithholding of \$1,250.

Stratum C has 6 accounts with documentation insufficient to support the reduced rate of withholding applied by the QI for total underwithholding of \$600. The QI subsequently cures the documentation for 1 of the accounts leaving 5 uncured accounts for a total remaining underwithholding of \$500.

The total underwithholding would be calculated as follows:

Total projected stratum underwithholding = (total actual stratum underwithholding/number of accounts selected for the sample in the stratum) \* total number of accounts in the stratum.

Stratum B:  $(1,250 / 139) * 1025 = \$9,217.63$

Stratum C:  $(500 / 139) * 1025 = \$3,687.05$

Total Underwithholding =  $\$9,217.63 + \$3,687.05 = \$12,904.68$

3. The IRS reserves the right to review and adjust any projection of underwithholding. If after reviewing all relevant information, the IRS determines that further action is necessary with respect to determining the amount of underwithholding for the year of review or any other year, the IRS may request that QI have the reviewer review additional sample units or conduct a full review of the entire sample (or determine that a projection of any underwithholding is unwarranted).

4. If the reviewer has determined that overwithholding has occurred with respect to a sample, projection may not be used for purposes of a refund. A projection of overwithholding may offset any underwithholding in the sample, however, provided that the IRS determines projection to be appropriate and QI enters into a closing agreement (Form 906) that QI will not file a claim for refund for any overwithholding that the reviewer has discovered.

#### D. Reporting of Sample Results in the Periodic Review Report

The reviewer should describe in the periodic review report the steps taken to construct the sample population and to ensure all accounts subject to review were included in the population and subject to sampling under the procedures outlined in this Appendix II. In constructing the population, the reviewer should reconcile total payments made to accounts in the population and total withholding of amounts to Part IV, sections E (Reconciliation of Reporting on Payments of Reportable Amounts) and F (Reconciliation of Withholding on Reportable Amounts) and Part VII (PTP-Related Payments) of Appendix I to the QI agreement, where applicable.

The reviewer should also record the original population and sample statistics separately for each sample (including for any PAI Account or Agency Account added to the sample of QI Accounts) by stratum as follows:

- (1) Total number of sample units in the population;
- (2) Total number of sample units in the sample;
- (3) Total reportable amounts for foreign recipients in the population;
- (4) Total reportable payments for U.S. recipients in the population;
- (5) Total reportable amounts for foreign recipients in the sample;
- (6) Total reportable payments for U.S. recipients in the sample;
- (7) Total PTP-related payments (as described in Part VII of Appendix I) in the population;
- (8) Total PTP-related payments (as described in Part VII of Appendix I) in the sample;
- (9) Total chapter 3 withholding in the population;

- (10) Total chapter 4 withholding in the population;
- (11) Total chapter 3 withholding in the sample;
- (12) Total chapter 4 withholding in the sample;
- (13) Total backup withholding in the population;
- (14) Total backup withholding in the sample;
- (15) Total PTP-related withholding (as described in Part VII of Appendix I) in the population; and
- (16) Total PTP-related withholding (as described in Part VII of Appendix I) in the sample.

### *APPENDIX III*

General Instructions: Information requested in this Appendix III relates to Forms 1042 and 1042-S. Use an excel spreadsheet format to replicate all parts and provide responses (amounts only). Attach the spreadsheet when submitting QI's periodic certification.

For waiver requests, provide the information for each year of the certification period. Otherwise, provide the information for each year of the certification period except the periodic review year. Responses should reflect the last amended return filed, if applicable. The box/line numbers below are as shown on Forms 1042 and 1042-S for the 2022 year. If a box or line number changes in future years, the equivalent line or box should be used.

Provide a detailed analysis and explanation of all variances (1-9) and additional variances listed below. Attach additional documents as needed.

#### **PART 1 – INFORMATION ON FORMS 1042-S ISSUED TO AND FILED BY QI.**

- A. (box 2) Total of gross income as reported on all Forms 1042-S filed by QI: \$
- B. (box 7a) Total of federal tax withheld by QI on all Forms 1042-S filed by QI: \$
- C. (box 8) Total of tax withheld by other agents on all Forms 1042-S filed by QI: \$
- D. (box 10) Total withholding credit as reported on all Forms 1042-S filed by QI: \$
- E. (box 2) Total of gross income as reported on all Forms 1042-S issued to QI as a recipient: \$
- F. (box 10) Total withholding credit as reported on all Forms 1042-S issued to QI as a recipient: \$
- G. (box 9) Total overwithheld tax repaid to recipient pursuant to adjustment procedures on all Forms 1042-S filed by QI: \$
- H. (box 11) Total tax paid by withholding agent (amounts not withheld) on all Forms 1042-S filed by QI: \$

#### **PART 2 – INFORMATION ON FORM 1042 FILED BY QI**

- I. (line 62c) Total gross amounts reported on Form 1042: \$
- J. (line 63a + 63c(2)) Tax withheld by QI reported on Form 1042: \$
- K. (line 63b(1) + 63b(2)) Tax withheld by other withholding agents reported on Form 1042: \$
- L. (line 63c(1)) Adjustments to overwithholding reported on Form 1042: \$
- M. (line 63e) Total tax reported as withheld or paid on Form 1042: \$
- N. (line 64e) Total net tax liability reported on Form 1042: \$
- O. (line 67a + 67b) Credits for amounts withheld by other withholding agents reported on Form 1042: \$

#### **PART 3 - RECONCILIATION OF FORMS 1042-S ISSUED TO QI TO FORMS 1042-S FILED BY QI.**

Variance 1 (gross income):  $A - E = \$$

Variance 2 (tax withheld by other withholding agents):  $C - F = \$$

**PART 4 – RECONCILIATION OF FORM 1042 FILED BY QI TO FORMS 1042-S FILED BY QI.**

Variance 3 (gross income):  $I - A = \$$

Variance 4 (tax withheld by QI):  $J - B = \$$

Variance 5 (tax withheld by other withholding agents):  $K - C = \$$

Variance 6 (adjustments to overwithholding by QI):  $L - G = \$$

Variance 7 (total tax reported as withheld or paid):  $M - (D + H) = \$$

**PART 5 – RECONCILIATION OF ITEMS ON FORM 1042 FILED BY QI**

Variance 8 (amounts withheld by other withholding agents):  $K - O = \$$

Variance 9 (tax withheld or paid compared to net tax liability):  $M - N = \$$

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*Explanation of Variances:*

Amounts received for which no Form 1042-S reporting was required and reporting was not received.

QDD related:

Non-QDD related:

Amounts paid by QI for which Form 1042-S reporting was required but were not reported.

QDD related:

Non-QDD related:

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Note: Certain payments to a QDD are subject to reporting even if no amount is withheld from the payment, and amounts on which a withholding agent withheld are subject to reporting whether or not the amount is subject to withholding. See §1.1461-1(c)(2)(i)(M) (covering dividends and substitute dividends). Certain amounts paid to a QDD, however, are not required to be reported on Form 1042-S. See §1.1461-1(c)(2)(ii)(J).

# Part IV

## Announcement 2022-28

### INTRODUCTION

Since 2000, the Internal Revenue Service (IRS) has identified over 30 “listed transactions”—transactions that the IRS has determined to be abusive tax avoidance transactions within the meaning of § 1.6011-4(b)(2) of the Income Tax Regulations—by publishing a notice or other subregulatory guidance as provided in § 1.6011-4. One of these notices, Notice 2017-10, 2017-4 I.R.B. 544, identified certain syndicated conservation easements as listed transactions. On November 9, 2022, the U.S. Tax Court, in a reviewed decision with two judges dissenting, held that Notice 2017-10 was invalid because it was issued without following the notice-and-comment rulemaking procedure set forth in section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 551 - 559. See *Green Valley Investors, LLC v. Commissioner*, 159 T.C. No. 5 (2022). Earlier this year, the U.S. Court of Appeals for the Sixth Circuit reached a similar conclusion with respect to Notice 2007-83, 2007-2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions. See *Mann Construction, Inc. v. United States*, 27 F.4th 1138 (6th Cir. 2022).

The Department of the Treasury (Treasury Department) and the IRS disagree with the Tax Court’s decision in *Green Valley* and the Sixth Circuit’s decision in *Mann Construction*, and are continuing to defend the validity of existing listing notices in circuits other than the Sixth Circuit. At the same time, however, to eliminate any confusion and to ensure that these decisions do not disrupt the IRS’s ongoing efforts to combat abusive tax shelters throughout the nation, the Treasury Department and the IRS are today issuing proposed regulations to identify certain syndicated conservation easement transactions as listed transactions. The Treasury Department and the IRS intend to finalize these regulations, after due consideration of public comments, in 2023 and intend to issue proposed regulations

identifying additional listed transactions in the near future.

### BACKGROUND

Section 6011 of the Internal Revenue Code (Code) requires persons to file such returns or statements prescribed by the Secretary of the Treasury or her delegate (Secretary), as required by regulation. Pursuant to that section, the Treasury Department and the IRS promulgated § 1.6011-4, which defines five types of “reportable transactions” and requires any participant in a reportable transaction to file a disclosure statement (Form 8886, *Reportable Transaction Disclosure Statement*) with the Office of Tax Shelter Analysis (OTSA) and with certain tax returns. That regulation defines a “listed transaction,” a type of reportable transaction, as a transaction that is the same as or substantially similar to one that the IRS has determined to be a tax avoidance transaction and has identified by notice, regulation, or other form of published guidance.

Following the promulgation of § 1.6011-4, Congress passed the American Jobs Creation Act (AJCA), which included section 6707A of the Code. Section 6707A imposes penalties on any person who fails to disclose participation in a reportable transaction, including a listed transaction. Consistent with the regulation, that statute defines a “reportable transaction” as “any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion;” and a “listed transaction” as “a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.”

Section 6111 of the Code and the related regulations require material advisors with respect to reportable transactions to disclose such transactions on Form 8918, *Material Advisor Disclosure Statement*. Section 6112 of the Code and the related regulations require material advisors to

maintain lists of persons advised with respect to reportable transactions. Sections 6707 and 6708 were also amended as part of the AJCA and impose penalties for failure to meet those disclosure and list maintenance obligations.

### TREASURY AND IRS ACTIONS TO COMBAT ABUSIVE TRANSACTIONS

The Treasury Department and the IRS continue to take the position that listed transactions can be identified by notice or other subregulatory guidance and that the APA’s notice-and-comment procedure does not apply to identification of such transactions. The Treasury Department and the IRS disagree with the Tax Court’s decision in *Green Valley* and the Sixth Circuit’s decision in *Mann Construction* and continue to defend the validity of existing listing notices in litigation. The Treasury Department and the IRS recognize, however, that *Mann Construction* is controlling law in the Sixth Circuit, and the IRS has ceased enforcing disclosure and list maintenance requirements with respect to Notice 2017-10 in the Sixth Circuit. Accordingly, to avoid confusion and to prevent disruption of the IRS’s ongoing efforts to identify and examine abusive tax shelters throughout the nation, the Treasury Department and the IRS are issuing proposed regulations to identify certain syndicated conservation easement transactions as listed transactions. The Treasury Department and the IRS intend to finalize these regulations, after due consideration of public comments, in 2023 and intend to issue proposed regulations identifying additional listed transactions in the near future.

Taxpayers should take note that, if a transaction becomes a listed transaction after a taxpayer files a return reflecting the tax effects of the transaction, § 1.6011-4(e)(2)(i) requires the participant to file a disclosure statement with OTSA within 90 days of the transaction becoming a listed transaction if the assessment limitations period remains open for any taxable year in which the taxpayer participated in the listed transaction. Accordingly, any taxpayer, including taxpayers who reside in

the Sixth Circuit, who has participated in a transaction in any year for which the assessment limitation period remains open when the regulation identifying the transaction as a listed transaction is finalized will have an obligation to disclose the transaction. Failure to disclose will subject the taxpayer to the penalty under section 6707A. Participants required to disclose listed transactions who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). That section provides that the time for assessment of any tax with respect to the transaction will not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A).

Likewise, if a regulation identifying a transaction as a listed transaction is finalized after the occurrence of the events described in § 301.6111-3(b)(4)(i) of the Procedure and Administration Regulations, a material advisor will be treated as becoming a material advisor on the date the regulation is finalized pursuant to § 301.6111-3(b)(4)(iii) (if not deemed a material advisor earlier pursuant to a valid listing notice). A material advisor is required to file a Form 8918 by the last day of the month following the quarter in which the advisor became a material advisor with respect to the listed transaction. See § 301.6111-3(d) and (e).

In addition, a material advisor must maintain a list identifying each person with respect to whom the advisor acted as a material advisor with respect to a listed transaction, if the person advised by the material advisor entered into the listed transaction within six years before the transaction was identified as a listed transaction. See § 301.6112-1(b)(2).

#### **DRAFTING INFORMATION**

The principal author of this announcement is Stephanie W. Chernoff of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement, contact Stephanie W. Chernoff at (202) 317-5670 (not a toll-free call).

## **Notice of Proposed Rulemaking**

### **Syndicated Conservation Easement Transactions as Listed Transactions**

#### **REG-106134-22**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The proposed regulations affect participants in these transactions as well as material advisors. In addition, while the proposed regulations exclude qualified organizations from being treated as participants or parties to a prohibited tax shelter transaction subject to excise tax, this notice of proposed rulemaking requests comments on whether the final regulations should remove the exclusion from the application of the excise tax for qualified organizations that facilitate syndicated conservation easement transactions. Finally, this document provides notice of a public hearing on the proposed regulations.

**DATES:** *Comment date:* Electronic or written comments must be received by February 6, 2023.

*Public hearing:* The public hearing is scheduled to be held by teleconference on March 1, 2023, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by February 6, 2023. If no outlines are received by February 6, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on February 27, 2023. The telephonic hearing will be made accessible to people

with disabilities. Requests for special assistance during the telephonic hearing must be received by February 24, 2023.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-106134-22). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments to the public docket. Send paper submissions to: CC:PA:LPD:PR (REG-106134-22), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-106134-22).

Individuals who want to testify by telephone at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-106134-22 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG-106134-22. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want to attend by telephone the public hearing must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-106134-22 and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG-106134-22. To request special assistance during the telephonic hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317-5177 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Theresa Melchiorre of the Office of Associate Chief Counsel (Income



Tax and Accounting), (202) 317-7011; concerning submissions of comments and requests for hearing, Regina L. Johnson at (202) 317-5177 or publichearings@irs.gov (not toll-free numbers).

## SUPPLEMENTARY INFORMATION: Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing is being held by teleconference on March 1, 2023, beginning at 10 a.m. ET unless no outlines are received by February 6, 2023.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to comment by telephone at the hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by February 6, 2023, as prescribed in the preamble under the **ADDRESSES** section.

A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at [www.regulations.gov](http://www.regulations.gov), search IRS and REG-106134-22. Copies of the agenda will also be available by emailing a request to [publichearings@irs.gov](mailto:publichearings@irs.gov). Please put “REG-106134-22 Agenda Request” in the subject line of the email.

Announcement 2020-4, 2020-17 I.R.B. 667 (April 20, 2020), provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

## Background

This document contains proposed additions to 26 CFR part 1 (Income Tax

Regulations) under section 6011 of the Internal Revenue Code (Code). The additions identify certain transactions that are “listed transactions” for purposes of section 6011.

## I. Overview of the Reportable Transaction Regime

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), “any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.”

On February 28, 2000, the Treasury Department and the IRS issued a series of temporary regulations (T.D. 8877; T.D. 8876; T.D. 8875) and cross-referencing notices of proposed rulemaking (REG-103735-00; REG-110311-98; REG-103736-00) under sections 6011, 6111, and 6112. The temporary regulations and cross-referencing notices of proposed rulemaking were published in the **Federal Register** (65 FR 11205, 65 FR 11269; 65 FR 11215, 65 FR 11272; 65 FR 11211, 65 FR 11271) on March 2, 2000 (2000 Temporary Regulations). The 2000 Temporary Regulations were modified several times before March 4, 2003, the date on which the Treasury Department and the IRS, after providing notice and opportunity for public comment and considering the comments received, published final regulations (T.D. 9046) in the **Federal Register** (68 FR 10161) under sections 6011, 6111, and 6112 (2003 Final Regulations). The 2000 Temporary Regulations and 2003 Final Regulations consistently provided that reportable transactions include listed transactions and that a listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and has identified by notice, regulation, or other form of published guidance as a listed transaction.

Following the 2003 promulgation of §1.6011-4, Congress passed the American

Jobs Creation Act of 2004 (AJCA), Public Law 108-357, 118 Stat. 1418 (October 22, 2004), which added sections 6707A, 6662A, and 6501(c)(10) to the Code, and revised sections 6111, 6112, 6707, and 6708 of the Code. See sections 811-812 and 814-817 of the AJCA. The AJCA’s legislative history explains that Congress incorporated in the statute the method that the Treasury Department and the IRS had been using to identify reportable transactions, and provided incentives, via penalties, to encourage taxpayer compliance with the new disclosure reporting obligations. As the Committee on Ways and Means explained in its report accompanying H.R. 4520, which became the AJCA:

The Committee believes that the best way to combat tax shelters is to be aware of them. The Treasury Department, using the tools available, issued regulations requiring disclosure of certain transactions and requiring organizers and promoters of tax-engineered transactions to maintain customer lists and make these lists available to the IRS. Nevertheless, the Committee believes that additional legislation is needed to provide the Treasury Department with additional tools to assist its efforts to curtail abusive transactions. Moreover, the Committee believes that a penalty for failing to make the required disclosures, when the imposition of such penalty is not dependent on the tax treatment of the underlying transaction ultimately being sustained, will provide an additional incentive for taxpayers to satisfy their reporting obligations under the new disclosure provisions.

House Report 108-548(I), 108th Cong., 2nd Sess. 2004, at 261 (June 16, 2004) (House Report).

In Footnote 232 of the House Report, the Committee on Ways and Means notes that the statutory definitions of “reportable transaction” and “listed transaction” were intended to incorporate the pre-AJCA regulatory definitions while providing the Secretary with leeway to make changes to those definitions:

The provision states that, except as provided in regulations, a listed transaction means a reportable transaction, which is the same as, or substantially similar to, a transaction specifically

identified by the Secretary as a tax avoidance transaction for purposes of section 6011. For this purpose, it is expected that the definition of “substantially similar” will be the definition used in Treas. Reg. sec. 1.6011-4(c)(4). However, the Secretary may modify this definition (as well as the definitions of “listed transaction” and “reportable transactions”) as appropriate.

*Id.* at 261 n.232.

Section 6707A(c)(1) defines a “reportable transaction” as “any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.” A “listed transaction” is defined by section 6707A(c)(2) as “a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.”

Section 6111(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction must make a return setting forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return must be filed not later than the date specified by the Secretary. Section 6111(b)(2) provides that a reportable transaction has the meaning given to such term by section 6707A(c).

Section 6112(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction (as defined in section 6707A(c)) must (whether or not required to file a return under section 6111 with respect to such transaction) maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor and (2) containing such other information as the Secretary may by regulations require.

On August 3, 2007, the Treasury Department and the IRS published final regulations in the **Federal Register** (72 FR 43146-01, 72 FR 43157-01, 72 FR 43154-01) under sections 6011, 6111, and 6112 modifying the rules relating to

the disclosure of reportable transactions by participants in reportable transactions under section 6011, the disclosure of reportable transactions by material advisors under section 6111, and the list maintenance requirements of material advisors with respect to reportable transactions under section 6112 in response to the changes in the AJCA.

## **II. Disclosure of Reportable Transactions by Participants and Penalties for Failure to Disclose**

Section 1.6011-4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of §1.6011-4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in §1.6011-4(e).

Section 1.6011-4(d) and (e) provide that the disclosure statement - Form 8886, *Reportable Transaction Disclosure Statement* (or successor form) - must be attached to the taxpayer’s tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to the IRS’s Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Reportable transactions include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. See §1.6011-4(b)(2) through (6). Consistent with the definitions previously provided in the 2000 Temporary Regulations and later in the 2003 Final Regulations, as promulgated in 2007, §1.6011-4(b)(2) continues to define a “listed transaction” as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

Section 1.6011-4(c)(4) provides that a transaction is “substantially similar” if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the

transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it may involve different entities or use different Code provisions.

Section 1.6011-4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer’s tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under §1.6011-4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance may also identify types or classes of persons that will not be treated as participants in a listed transaction.

Section 1.6011-4(e)(2)(i) provides that if a transaction becomes a listed transaction after the filing of a taxpayer’s tax return reflecting the taxpayer’s participation in the listed transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the listed transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction. The Commissioner of Internal Revenue (Commissioner) may also determine the time for disclosure of listed transactions in the published guidance identifying the transaction.

Participants required to disclose these transactions under §1.6011-4 who fail to do so are subject to penalties under section 6707A. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is \$5,000 in the case of a natural person

and \$10,000 in any other case. For a listed transaction, the maximum penalty amount is \$100,000 in the case of a natural person and \$200,000 in any other case.

Additional penalties may also apply. In general, section 6662A imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. See section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). That section provides that the time for assessment of any tax with respect to the transaction shall not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A).

### **III. Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure to Disclose**

Section 301.6111-3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable transaction, as defined in §1.6011-4(b), must file a return as described in §301.6111-3(d) by the date described in §301.6111-3(e).

Section 301.6111-3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross

income in excess of the threshold amount as defined in §301.6111-3(b)(3) for the material aid, assistance, or advice. Under §301.6111-3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in §1.6011-4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in §301.6111-3(d) and (e). Section 301.6111-3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with the OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to the OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111-3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in §301.6111-3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Additionally, material advisors must prepare and maintain lists identifying each person with respect to whom the advisor acted as a material advisor with respect to the reportable transaction in accordance with §301.6112-1(b) and furnish

such lists to the IRS in accordance with §301.6112-1(e).

Section 6707(a) provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (A) \$200,000, or (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

A material advisor may also be subject to a penalty under section 6708 for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is \$10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

### **IV. Tax-Exempt Entities as Parties to Prohibited Tax Shelter Transactions**

Section 4965 of the Code, which was enacted in 2006, is intended to deter certain "tax-exempt entities" (as defined in section 4965(c)) from facilitating prohibited tax shelter transactions, which include listed transactions. Section 4965(a)(1) provides, in part, that if a transaction is a prohibited tax shelter transaction at the time a tax-exempt entity becomes a party to the transaction, the entity must pay a tax for the taxable year and any subsequent taxable year as provided in section 4965(b)(1). Tax-exempt entities subject to the tax are listed in section 4965(c)(1)-(3) and include, among others, entities and governmental units described in sections 501(c) and 170(c) (other than the United States). A tax-exempt entity that is a party to a prohibited tax shelter transaction generally is also subject to various reporting and disclosure obligations. Additionally, an entity manager is subject to excise taxes under section 4965(a)(2) if the manager approves the entity as a party (or otherwise causes the entity to be a party) to a prohibited tax shelter transaction

and knows or has reason to know that the transaction is a prohibited tax shelter transaction.

#### A. *The excise taxes*

The amount of the section 4965 tax owed by a tax-exempt entity depends on whether the tax-exempt entity knows, or has reason to know, that a transaction is a prohibited tax shelter transaction at the time the entity becomes a party to the transaction. A tax-exempt entity is treated as knowing or having reason to know that a transaction is a prohibited tax shelter transaction if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the entity as (or otherwise caused the entity to be) a party to the transaction.<sup>1</sup> The tax-exempt entity is also attributed the knowledge or reason to know of certain entity managers—those persons with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization—even if the entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

Section 53.4965-4(a)(1) provides that a tax-exempt entity is a “party” to a prohibited tax shelter transaction if it facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status. In addition, under §53.4965-4(a)(2) and (b), the Secretary may issue published guidance to identify tax-exempt entities by type, class, or role that will or will not be treated as parties to a prohibited tax shelter transaction.

If the tax-exempt entity unknowingly becomes a party to a prohibited tax shelter transaction, the section 4965 tax generally equals the greater of (1) the product of the highest rate of tax under section 11 (currently 21 percent) and the entity’s net income attributable to the prohibited tax shelter transaction, or (2) the product of the highest rate of tax under section 11 and 75 percent of the proceeds received by the entity that are attributable to the prohibited tax shelter transaction. If the tax-exempt entity knew or had reason to know

that the transaction was a prohibited tax shelter transaction at the time the tax-exempt entity became a party to the transaction, the section 4965 tax increases to the greater of (1) 100 percent of the entity’s net income attributable to the prohibited tax shelter transaction, or (2) 75 percent of the entity’s proceeds attributable to the prohibited tax shelter transaction.

The terms “net income” and “proceeds” are defined in §53.4965-8. In general, a tax-exempt entity’s net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction, reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Code if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by the taxes imposed by subtitle D of the Code (other than the tax imposed by section 4965) with respect to the transaction. In the case of a tax-exempt entity that is a party to the transaction by reason of facilitating a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status, the term “proceeds,” solely for purposes of section 4965, means the gross amount of the tax-exempt entity’s consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for purposes of section 4965. In addition, for all tax-exempt entities that are parties to a prohibited tax shelter transaction, any amount that is a gift or a contribution to a tax-exempt entity and that is attributable to a prohibited tax shelter transaction is treated as proceeds for purposes of section 4965, unreduced by any associated expenses.

The amount of the section 4965 tax on an “entity manager” equals \$20,000 for each time the manager approves the tax-exempt entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. This liability is not joint and several.

#### B. *Disclosures*

Section 53.6011-1 requires that a tax-exempt entity subject to the section 4965 excise tax must file Form 4720, *Return of Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, to report the liability and pay the tax due under section 4965(a)(1). Under §1.6033-5, a tax-exempt entity that is a party to a prohibited tax shelter transaction must file Form 8886-T, *Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction*, to disclose that it is a party to a prohibited tax shelter transaction, the identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity, and certain other information. Under §1.6033-2, if the tax-exempt entity is required to file Form 990, *Return of Organization Exempt From Income Tax*, it must disclose on that form that it is a party to a prohibited tax shelter transaction, whether any taxable party notified the tax-exempt entity that it was or is a party to a prohibited tax shelter transaction, and whether the tax-exempt entity filed Form 8886-T.

Section 6011(g) and §301.6011(g)-1 provide that any taxable party to a prohibited tax shelter transaction must disclose to each tax-exempt entity that the taxable party knows or has reason to know is a party to such transaction that the transaction is a prohibited tax shelter transaction.

#### V. *Conservation Easements*

Section 170(f)(3)(A) provides that, in the case of a contribution (not made by a transfer in trust) of an interest in property that consists of less than the taxpayer’s entire interest in such property, a deduction will be allowed only to the extent that the value of the interest contributed would be allowable as a deduction under section 170 if such interest had been transferred in trust.

Section 170(f)(3)(B)(iii) provides that section 170(f)(3)(A) does not apply to a qualified conservation contribution.

Section 170(h)(1) provides that, for purposes of section 170(f)(3)(B)(iii), the term “qualified conservation contribution”

<sup>1</sup> Section 53.4965-6 of the *Foundation and Similar Excise Tax Regulations* provides factors to be considered in determining whether an entity manager knows or has reason to know that a transaction is a prohibited tax shelter transaction.

means a contribution (1) of a qualified real property interest, (2) to a qualified organization, (3) exclusively for conservation purposes.

Under section 170(h)(2), the term “qualified real property interest” means any of the following interests in real property: (A) the entire interest of the donor other than a qualified mineral interest as defined in section 170(h)(6); (B) a remainder interest; and (C) a restriction (granted in perpetuity) on the use that may be made of the real property.

Section 170(h)(3) provides that the term “qualified organization” generally includes governmental units, certain public charities, and Type I supporting organizations thereto.

Section 170(h)(4)(A) generally provides that the term “conservation purpose” includes (1) the preservation of land areas for outdoor recreation by, or the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation is either for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and that will yield a significant public benefit, or (4) the preservation of an historically important land area or a certified historic structure (as defined in section 170(h)(4)(C)).

Section 170(h)(4)(B) provides a special rule with respect to buildings in registered historic districts. Among other requirements, any contribution of a qualified real property interest that is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) is not considered to be exclusively for conservation purposes unless such interest includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior.

Section 170(h)(4)(C) provides that, for purposes of section 170(h)(4)(A)(iv), the term “certified historic structure” means any building, structure, or land area which is listed in the National Register, or any

building which is located in a registered historic district (as defined in section 47(c)(3)(B) of the Code) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district. A building, structure, or land area satisfies section 170(h)(4)(C) if it satisfies that definition either at the time of the transfer or on the due date (including extensions) for filing the transferor’s return under chapter 1 of the Code for the taxable year in which the transfer is made.

Section 170(h)(5)(A) provides that, for purposes of section 170(h), a contribution is not treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity. Section 170(h)(2)(C) and section 1.170A-14(b)(2) provide in part that a perpetual conservation restriction is a restriction granted in perpetuity on the use that may be made of real property including an easement or other interest in property that under state law has attributes similar to an easement.

## **VI. Syndicated Conservation Easement Transactions and Notice 2017-10**

Some promoters have been syndicating conservation easement transactions that purport to give investors in a partnership or other pass-through entity (pass-through entity) the opportunity to claim a charitable contribution deduction in amounts that significantly exceed the amounts invested. In one type of an abusive syndicated conservation easement transaction, the promoter obtains an appraisal that purports to be a qualified appraisal as defined in section 170(f)(11)(E)(i). The appraisal greatly inflates the value of the conservation easement based on unreasonable and unrealistic conclusions about the highest and best use of the real property and does not take into account all of the factors necessary to support the valuation, such as the time and costs to achieve that highest and best use. In addition, investors who held their direct or indirect interests in the pass-through entity for one year or less take into account under section 1223 of the Code the pass-through entity’s holding period in the conservation easement for purposes of section 1222 of the Code (taking into account any modification required by section 1061 of the Code) for purposes of potential treatment of the donated

conservation easement as long-term capital gain property under section 170(e)(1).

On December 23, 2016, the IRS released Notice 2017-10, 2017-4 I.R.B. 544, which was subsequently modified by Notice 2017-29, 2017-20 I.R.B. 1243, and Notice 2017-58, 2017-42 I.R.B. 326, alerting taxpayers and their representatives that syndicated conservation easement transactions described in Notice 2017-10, and substantially similar transactions, are tax avoidance transactions and identifying them as listed transactions for purposes of §1.6011-4(b)(2) and sections 6111 and 6112. Notice 2017-10 also alerts persons involved with the transactions that certain responsibilities may arise from their involvement. Notice 2017-10, as modified by Notice 2017-29, specifically excludes a donee described in section 170(c) from being treated as a party to the transaction under section 4965 of the Code (“section 4965 carve-out”), a participant under §1.6011-4, or a material advisor under section 6111(b)(1). Notice 2017-10 applies to easements placed on any real property, including historically important land areas and certified historic structures.

Notice 2017-10 describes the following transaction as a listed transaction. An investor receives promotional materials that offer investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times (that is, 250 percent of) the amount of the investor’s investment. The promotional materials may be oral or written. For purposes of Notice 2017-10, promotional materials include, but are not limited to, documents described in §301.6112-1(b)(3)(iii)(B). The investor purchases an interest, directly or indirectly (through one or more tiers of pass-through entities), in the pass-through entity that holds real property. The pass-through entity that holds the real property contributes a conservation easement encumbering the property to a tax-exempt entity and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the investor. Following that contribution, the investor reports on his or her federal income tax return a charitable contribution deduction with respect to the conservation easement.

Notice 2017-10 creates a rule only for purposes of reporting and penalties under the reportable transaction rules. No inference should be drawn from Notice 2017-10 (or these regulations) regarding the appropriateness of any deduction in any specific case, including cases in which the deduction is less than two and one-half times the amount of an investor's investment.

The foregoing efforts to combat abuse notwithstanding, the Treasury Department and IRS fully support otherwise proper deductions attributable to the voluntary contribution of a properly valued restriction on real property requiring the real property to be granted and protected for conservation purposes in perpetuity.

## VII. Purpose of Proposed Regulations

On March 3, 2022, the Sixth Circuit issued an order in *Mann Construction v. United States*, 27 F.4th 1138, 1147 (6th Cir. 2022), holding that Notice 2007-83, 2007-2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the Administrative Procedure Act (APA), 5 U.S.C. 551-559, because the notice was issued without following the notice-and-comment procedures required by section 553 of the APA. The Sixth Circuit concluded that Congress did not clearly express an intent to override the notice-and-comment procedures required by section 553 of the APA when it enacted the AJCA. *Id.* at 1148. The Sixth Circuit reversed the decision of the district court, which held that Congress had authorized the IRS to identify listed transactions without notice and comment. See *Mann Construction, Inc. v. United States*, 539 F.Supp.3d 745, 763 (E.D. Mich. 2021). See also *GBX Associates, LLC, v. United States*, 1:22cv401 (N.D. Ohio, Nov. 14, 2022).

Relying on an analysis similar to the Sixth Circuit's analysis in *Mann Construction*, the Tax Court, in a reviewed decision with two judges dissenting, recently held that Notice 2017-10 was improperly issued because it was issued without following the APA's notice and comment procedures. See *Green Valley*

*Investors, LLC, et al. v. Commissioner*, 159 T.C. No. 5 (Nov. 9, 2022). Accordingly, the court granted the petitioner's cross-motion for partial summary judgment on the application of section 6662A penalties. A final decision has not been entered in the case.

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the Tax Court's decision in *Green Valley* and are continuing to defend the validity of Notice 2017-10 and other notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. At the same time, however, to eliminate any confusion and ensure consistent enforcement of the tax laws throughout the nation, the Treasury Department and the IRS are issuing these proposed regulations to identify certain syndicated conservation easement transactions as listed transactions for purposes of all relevant provisions of the Code and Treasury Regulations.

These proposed regulations inform taxpayers that participate in syndicated conservation easement transactions, and substantially similar transactions, and persons who act as material advisors with respect to these transactions, and substantially similar transactions, that, once these proposed regulations are published in final form, those taxpayers and material advisors must disclose the transactions in accordance with the final regulations and the regulations issued under section 6011 and 6111. Material advisors must also maintain lists as required by section 6112. Prior to the date these regulations are published as final regulations, it is the position of the Treasury Department and the IRS that disclosure and list maintenance requirements for syndicated conservation easement transactions identified as listed transactions in Notice 2017-10 continue to be in effect, other than in the Sixth Circuit. In addition, taxpayers, including taxpayers in the Sixth Circuit, who have filed a tax return reflecting their participation in a syndicated conservation easement transaction before the final regulations are published and who have not disclosed the transaction pursuant to Notice 2017-10 will be required to file a disclosure statement within 90 calendar days after

the date on which the final regulations are published if the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction remains open. Material advisors also have disclosure and list maintenance obligations with respect to such transactions. See Part VI. of the Explanation of Provisions section of this preamble.

The IRS intends to challenge the purported tax benefits from these syndicated conservation easement transactions based on the overvaluation of the conservation easement. The IRS may also challenge the purported tax benefits from these transactions based on failure to comply with the requirements of section 170 (including, for example, lack of donative intent or the failure to comply with requirements of section 170(h)), lack of economic substance, lack of business purpose, violation of the partnership anti-abuse rule, or application of other rules or doctrines based on the facts of a particular case.

## Explanation of Provisions

### I. Definition of Syndicated Conservation Easement Transactions

Proposed §1.6011-9(a) provides that a transaction that is the same as, or substantially similar to, a syndicated conservation easement transaction described in proposed §1.6011-9(b) is a listed transaction for purposes of §1.6011-4(b)(2) and sections 6111 and 6112. "Substantially similar to" is defined in §1.6011-4(c)(4) to include any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or a similar tax strategy. In the context of a syndicated conservation easement transaction, that would include, for example, transactions in which the contributed property is described in section 170(h)(2)(A) or (B) or a fee interest in real property.

Proposed §1.6011-9(b) defines a syndicated conservation easement transaction as a transaction in which the four elements described in proposed §1.6011-9(b)(1) through (4) occur (regardless of the order in which they occur). These four elements are as follows:

### *A. Promotional materials satisfy the 2.5 times rule.*

A taxpayer receives promotional materials that offer investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity. The proposed regulations refer to this element as the "2.5 times rule." Proposed §1.6011-9(c)(4) states that, for this purpose, the term "promotional materials" includes materials described in §301.6112-1(b)(3)(iii)(B) and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as the deed of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction. These proposed regulations provide additional guidance on how to determine whether the 2.5 times rule is met, as discussed in Part II of the Explanation of Provisions section of this preamble.

### *B. Taxpayer invests in the pass-through entity.*

The taxpayer acquires an interest, directly or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns real property (that is, the taxpayer becomes an investor in the entity that owns the real property).

### *C. Pass-through entity contributes the conservation easement to a qualified organization and allocates a charitable contribution deduction to its partners.*

The pass-through entity that owns the real property contributes an easement on such real property to a qualified organization and treats the easement as a conservation easement. A conservation easement is defined in these proposed regulations (in proposed §1.6011-9(c)(2)) as a restriction,

exclusively for conservation purposes, granted in perpetuity (per the relevant subsections of section 170), on the use that may be made of specified real property.

The pass-through entity allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer.

### *D. Taxpayer reports charitable contribution deduction on taxpayer's Federal income tax return.*

The taxpayer reports on the taxpayer's Federal income tax return a charitable contribution deduction with respect to the conservation easement.

## **II. 2.5 Times Rule**

These proposed regulations include three rules to address potential avoidance of the 2.5 times rule. First, to prevent promoters from circumventing the 2.5 times rule by having promotional materials contain language that is ambiguous as to the amount of the potential charitable deduction, the proposed regulations provide that the highest deduction amount stated or implied in the promotional materials, taken as a whole, applies. Thus, if the promotional materials suggest a range of possible charitable contribution deduction amounts, the highest suggested deduction amount determines whether the 2.5 times rule is met. Similarly, if one piece of promotional materials (for example, an appraisal or oral statement) suggests a higher charitable contribution deduction amount than do other promotional materials, then the highest suggested charitable contribution deduction amount will determine whether the 2.5 times rule is met.

Second, the proposed regulations include a rebuttable presumption deeming the 2.5 times rule to be met if (i) the pass-through entity donates a conservation easement within three years following taxpayer's investment in the pass-through entity, (ii) the pass-through entity allocates a charitable contribution deduction to the taxpayer that equals or exceeds two and one-half times the amount of the taxpayer's investment, and (iii) the taxpayer claims a deduction that equals or exceeds two and one-half times the amount of the

taxpayer's investment. This presumption is intended to address taxpayers and promoters who may not be forthcoming about the content or receipt of the promotional materials (as broadly defined under the proposed regulations). By the fact that the taxpayer claimed a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity, the Treasury Department and the IRS will presume that the taxpayer received promotional materials that offered investors the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity. The presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might receive a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity. The Treasury Department and the IRS request comments on this rule.

Finally, to prevent taxpayers from investing excess amounts in the pass-through entity to avoid meeting the 2.5 times rule, the proposed regulations contain an "anti-stuffing" rule. The anti-stuffing rule provides that the amount of a taxpayer's investment in the pass-through entity for purposes of determining application of the 2.5 times rule is limited to the portion of the taxpayer's investment that is attributable to the portion of the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section. For example, if a portion of the taxpayer's investment in the pass-through entity is attributable to property held directly or indirectly by the pass-through entity other than the real property on which a conservation easement is placed (including any other real property, cash, cash equivalents, digital assets, marketable securities, or other assets), that portion of the taxpayer's investment is not attributable to the portion of the real property on which a conservation easement is placed for purposes of the 2.5 times rule. The proposed

regulations include an example illustrating the application of this rule.

### III. Participant

Whether a taxpayer has participated in the listed transaction described in proposed §1.6011-9(b) is determined under §1.6011-4(c)(3)(i)(A). Participants include, but are not limited to, an owner of a pass-through entity, the pass-through entity (any tier, if multiple tiers are involved in the transaction), or any other taxpayer whose tax return reflects tax consequences or a tax strategy described in these proposed regulations. The proposed regulations provide, consistent with Notice 2017-10, that a qualified organization to which a syndicated conservation easement described in proposed §1.6011-9(b) is donated is not treated as a participant under §1.6011-4(c)(3)(i)(A) to the listed transaction described in these proposed regulations.

### IV. Material Advisors

Material advisors, including promoters, appraisers and return preparers who make a tax statement with respect to transactions described in proposed §1.6011-9(b), have disclosure and list maintenance obligations under sections 6111 and 6112. See §§301.6111-3 and 301.6112-1. Notice 2017-10, as modified by Notice 2017-29, provided that a qualified organization is not treated as a material advisor under section 6111. These proposed regulations differ from Notice 2017-10, as modified, in that they do not contain this rule. One of the requirements to be a material advisor under section 6111(b)(1) is that the person must directly or indirectly derive gross income in excess of the threshold amount provided in section 6111(b)(1)(B) for providing material aid, assistance, or advice with respect to the listed transaction. The regulations under section 6111 provide that gross income includes all fees for a tax strategy, for services for advice (whether or not tax advice), and for

the implementation of a reportable transaction. However, a fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. See §301.6111-3(b)(3)(ii). The Treasury Department and the IRS request comments on whether qualified organizations are receiving fees for providing material aid, assistance, or advice with respect to transactions described in these proposed regulations, the nature of the services being provided, and why a carve-out from the definition of material advisor is needed.

### V. Party to a Prohibited Tax Shelter Transaction

The proposed regulations provide, consistent with Notice 2017-10, that a qualified organization<sup>2</sup> is not treated as a party to the transaction under section 4965. However, the Treasury Department and the IRS are considering whether a qualified organization that facilitates an abusive syndicated conservation easement transaction described in these proposed regulations should be subject to section 4965. Since the issuance of Notice 2017-10, the IRS has received tens of thousands of listed transaction disclosures under sections 6011 and 6111. These disclosures indicate that a small number of qualified organizations facilitate abusive syndicated conservation easement transactions, sometimes for several hundreds of investors per year. Eliminating or limiting the scope of the section 4965 carve-out could deter qualified organizations from facilitating these abusive transactions. Any elimination or limitation of the section 4965 carve-out would apply only to transactions occurring after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

While some land trusts facilitate syndicated conservation easement transactions that the land trusts know, or have reason to know, are abusive, other land trusts take affirmative steps to avoid participating in

abusive transactions. For example, some land trusts, when engaging in transactions with pass-through entities of unrelated parties, require a donor's appraisal and will decline to participate in any transaction in which, among other things: (i) the appraisal indicates an increase in value of more than two and one-half times the basis in the property; (ii) the easement or property is donated within 36 months of the pass-through entity's acquisition of the property; and (iii) the value of the donation (not the deduction) is \$1 million or greater.

The Treasury Department and the IRS request comments on specific ways that qualified organizations can engage in due diligence to avoid entering into abusive syndicated conservation easement transactions described in these proposed regulations. For example: what questions should qualified organizations ask donors to avoid entering into a syndicated conservation easement transaction described in these proposed regulations; when is the qualified organization best positioned to make the inquiries; and what written information or materials could the donor provide to the qualified organization to ensure the qualified organization will not be participating in an inappropriate transaction?

#### A. Eliminating the section 4965 carve-out

Tax-exempt entities that facilitate abusive syndicated conservation easement transactions described in these proposed regulations do so by reason of their tax-exempt, tax-indifferent, or tax-favored status. Thus, if the final regulations were to eliminate the section 4965 carve-out, a qualified organization that accepts a syndicated conservation easement described in these proposed regulations would be subject to the section 4965 excise tax. However, if the qualified organization did not know, or have reason to know, that the contribution of the easement was part of a syndicated conservation easement

<sup>2</sup>As noted in Part V of the Background section of this preamble, a donation of a qualified conservation contribution must be made to a "qualified organization," generally defined in section 170(h)(3) to include governmental units, certain public charities, and Type I supporting organizations thereto. Under section 4965(c), the term "tax-exempt entity" includes, among others, entities and governmental units described in sections 501(c) and 170(c) (other than the United States). Thus, absent the section 4965 carve-out, tax-exempt entities that would be affected are donees that are qualified organizations described in section 170(h)(3), other than the United States, that accept a conservation easement as part of the syndicated conservation easement transaction described in these proposed regulations.



transaction described in these proposed regulations, then the qualified organization would be subject only to the lesser section 4965 entity-level tax provided in section 4965(b)(1)(A). See discussion in Part IV.A. of the Background section of this preamble. Further, if at the time an entity manager approves or otherwise causes the qualified organization to accept the contribution the manager does not know, or have reason to know, that the contribution is part of a syndicated conservation easement transaction described in these proposed regulations, the manager would not be subject to the tax imposed by section 4965(a)(2).

Conversely, if the qualified organization knows or has reason to know (under the rules discussed in Part IV.A. of the Background section of this preamble) that a contribution of an easement is part of a syndicated conservation easement transaction described in these proposed regulations, the qualified organization would be subject to the increased section 4965 entity-level tax provided in section 4965(b)(1)(B). In addition, any entity manager who approves or otherwise causes the qualified organization to accept the contribution of an easement that the entity manager knows or has reason to know is part of a syndicated conservation easement transaction described in these proposed regulations would be subject to the \$20,000 tax imposed by section 4965(a)(2).

The Treasury Department and the IRS request comments on eliminating the section 4965 carve-out in final regulations, including whether there are specific situations in which a qualified organization should or should not be considered to know or have reason to know that a conservation easement contribution is part of a syndicated conservation easement transaction described in these proposed regulations.

#### *B. Limiting the section 4965 carve-out*

As described in Part IV.A. of the Background section of this preamble, §53.4965-4(b) provides that the Secretary can identify tax-exempt entities that will

not be treated as parties to a prohibited tax shelter transaction in published guidance by type, class, or role. As an alternative to eliminating the section 4965 carve-out in final regulations, the Treasury Department and the IRS are considering whether to include a more limited carve-out in the final regulations. Such a limited carve-out could provide, for example, that a tax-exempt entity that conducted an adequate amount of due diligence before entering into a transaction is not treated as a party to a syndicated conservation easement transaction.

The Treasury Department and the IRS request comments on what would constitute adequate due diligence to warrant relieving a tax-exempt entity from potential liability for the section 4965 excise tax and what additional safeguards might be needed. For example, the Treasury Department and the IRS request comments on whether, if final regulations include a more limited carve-out, the carve-out should provide relief only for organizations that have not previously been involved<sup>3</sup> in a syndicated conservation easement transaction.

#### *C. Net income and proceeds*

As noted in Part IV.A. of the Background section of this preamble, the section 4965 excise tax is based on an entity's net income attributable to the prohibited tax shelter transaction or proceeds received by the entity that are attributable to a prohibited tax shelter transaction. The Treasury Department and the IRS request comments on determining the amount of net income and proceeds attributable to the prohibited tax shelter transaction in the context of a syndicated conservation easement transaction, including what gross income (if any) typically is derived from (and what deductions are attributable to) the transaction; the value of the gift or contribution that would be treated as proceeds for purposes of section 4965; and whether the IRS should designate additional amounts as proceeds for section 4965 purposes, as permitted by §53.4965-8.

#### *D. General request for comments*

In addition to the specific comment requests above, the Treasury Department and the IRS request comments regarding all aspects of the potential elimination or limitation of the section 4965 carve-out in final regulations, including any alternative ways to deter tax-exempt entities from acting as parties to syndicated conservation easement transactions and whether any additional guidance is needed on the application of section 4965 in the syndicated conservation easement context.

### **VI. Effect of Transaction Becoming a Listed Transaction Under These Regulations**

Participants required to disclose these transactions under §1.6011-4 who fail to do so are subject to penalties under section 6707A. Participants required to disclose these transactions under §1.6011-4 who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose these transactions under section 6111 who fail to do so are subject to penalties under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) are subject to penalties under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the section 6694 penalty for understatement of a taxpayer's liability by a tax return preparer, the section 6695A penalty for certain valuation misstatements attributable to incorrect appraisals, the section 6700 penalty for promoting abusive tax shelters, and the section 6701 penalty for aiding and abetting understatement of tax liability.

Taxpayers who have filed a tax return (including an amended return (or Administrative Adjustment Request

<sup>3</sup> A tax-exempt entity might be considered "involved" for these purposes, for example, if it previously accepted a syndicated conservation easement or if any person who established the tax-exempt entity, or related persons to any such person, were participants, material advisors, or involved in any other capacity with a previous syndicated conservation easement transaction.

(AAR) for certain partnerships)) reflecting their participation in these transactions prior to **[DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]** and who have not previously disclosed their participation in the transactions pursuant to Notice 2017-10 must disclose the transactions as provided in §1.6011-4(d) and (e) provided that the period of limitations for assessment of tax, including any applicable extensions, for any taxable year in which the taxpayer participated in the transaction has not ended on or before **[DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]**. Taxpayers that disclosed their participation in a transaction pursuant to Notice 2017-10 before final regulations are published will be treated as having made the disclosure pursuant to the final regulations for the years covered by that disclosure.

In addition, material advisors have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding §301.6111-3(b)(4)(i) and (iii), material advisors are required to disclose only if they have made a tax statement on or after **[DATE 6 YEARS BEFORE DATE OF PUBLICATION OF FINAL RULE]**.

**VII. Applicability Date**

Proposed §1.6011-9(a) would identify syndicated conservation easement transactions described in proposed §1.6011-9(b) as listed transactions effective as of the date of publication in the **Federal Register** of a Treasury decision adopting these regulations as final regulations.

**VIII. Effect on Other Documents**

These proposed regulations do not revoke or modify Notice 2017-10.

**Special Analyses**

**I. Paperwork Reduction Act**

The collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545-1800 and 1545-0865.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the

updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control number for the forms and remains unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

**II. Regulatory Flexibility Act**

The Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). As previously explained, the basis for these proposed regulations is Notice 2017-10, 2017-4 I.R.B. 544 (modified by Notice 2017-29, 2017-20 I.R.B. 1243, and Notice 2017-58, 2017-42 I.R.B. 326). The following chart sets forth the gross receipts of respondents to Notice 2017-10 that report federal tax information using Form 1065 (U.S. Return of Partnership Income) and Form 1120-S (U.S. Income Tax Return for an S Corporation):

<b>Notice 2017-10 All Filings 2017 to 2021 Respondents by Size</b>		
<b>Receipts</b>	<b>Respondents</b>	<b>Filings</b>
<b>Under 5M</b>	93.3%	88.3%
<b>5M to 10M</b>	3.1%	5.2%
<b>10M to 15M</b>	1.2%	2.9%
<b>15M to 20M</b>	0.6%	0.4%
<b>20M to 25M</b>	0.6%	0.7%
<b>Over 25M</b>	1.2%	2.5%

This chart shows that the majority of respondents to Notice 2017-10 reported gross receipts under \$5 million. Even assuming that these respondents constitute a substantial number of small entities, the proposed regulations will not have a significant economic impact on these entities because the proposed regulations implement sections 6111 and 6112 and §1.6011-4

by specifying the manner in which and time at which an identified transaction must be reported. Accordingly, because the proposed regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the proposal is expected to be minimal. Further, the Treasury Department and the IRS expect that the reporting burden

is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the

IRS. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is \$98.87 (2021 dollars) per hour. Thus, it is estimated that a respondent will incur costs of approximately \$2,127.00 per filing. Disclosures received to date by the Treasury Department and the IRS in response to the reporting requirements of Notice 2017-10 indicate that this small amount will not pose any significant economic impact for those taxpayers now required to disclose under the proposed regulations.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

### III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

### IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does

not impose substantial direct compliance costs on State and local governments or preempt state law within the meaning of the Executive Order.

### V. Regulatory Planning and Review

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has determined that this proposed rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866. Therefore, OIRA has not reviewed this proposed rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (OMB).

### Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

### Drafting Information

The principal author of these proposed regulations is Theresa Melchiorre, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

### List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and record-keeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:  
Authority: 26 U.S.C. 7805 \* \* \*

Section 1.6011-9 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011. \* \* \*

Par. 2. Section 1.6011-9 is added to read as follows:

### §1.6011-9 Syndicated conservation easement listed transactions.

(a) *Identification as listed transaction.* Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of §1.6011-4(b)(2).

(b) *Syndicated conservation easement transaction.* The term *syndicated conservation easement transaction* means a transaction in which the following steps occur (regardless of the order in which they occur)—

(1) A taxpayer receives promotional materials that offer investors in a pass-through entity the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity as determined under paragraph (d) of this section (2.5 times rule);

(2) The taxpayer acquires an interest directly, or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns real property (that is, becomes an investor in the entity);

(3) The pass-through entity that owns the real property contributes an easement on such real property, which it treats as a conservation easement within the meaning of paragraph (c)(2) of this section, to a qualified organization and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer; and

(4) The taxpayer claims a charitable contribution deduction with respect to the conservation easement on the taxpayer's Federal income tax return.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Charitable contribution deduction.* The term *charitable contribution deduction* means a deduction under section 170 of the Internal Revenue Code (Code), which includes a deduction arising from a qualified conservation contribution as defined in section 170(h)(1).

(2) *Conservation easement.* The term *conservation easement* means a restriction, within the meaning of section 170(h)(2)(C), exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and section 170(h)(4), granted in perpetuity, on the use that may be made of specified real property.

(3) *Pass-through entity.* The term *pass-through entity* means a partnership, S corporation, or trust (other than a grantor trust within the meaning of subchapter J of chapter 1 of the Code).

(4) *Promotional materials.* The term *promotional materials* includes materials described in §301.6112-1(b)(3)(iii)(B) of this chapter and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as the deed of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction.

(5) *Qualified organization.* The term *qualified organization* means an organization described in section 170(h)(3).

(6) *Real property.* The term *real property* includes all land, structures, and buildings, including a certified historic structure defined in section 170(h)(4)(C).

(d) *Application of 2.5 times rule—(1) Multiple suggested deduction amounts.* If the promotional materials, as defined in paragraph (c)(4) of this section and described in paragraph (b)(1) of this section, suggest or imply a range of possible charitable contribution deduction amounts that may be allocated to the taxpayer, the highest suggested or implied deduction amount will determine whether the 2.5 times rule is met. In addition, if one piece of promotional materials (for example, an appraisal or oral statement) suggests or implies a higher charitable contribution deduction amount than suggested or implied by other promotional materials, then the highest suggested charitable contribution deduction amount determines whether the 2.5 times rule is met.

(2) *Rebuttable presumption.* The 2.5 times rule is deemed to be met if the pass-through entity donates a conservation easement within three years following taxpayer's investment in the pass-through entity, the pass-through entity allocates a charitable contribution deduction to the taxpayer that equals or exceeds two and one-half times the amount of the taxpayer's investment, and the taxpayer claims a charitable contribution deduction that equals or exceeds two and one-half times the amount of the taxpayer's investment. This presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity.

(3) *Anti-stuffing rule.* For purposes of paragraph (b)(1) of this section, the amount of a taxpayer's investment in the pass-through entity is limited to the portion of the taxpayer's investment described in paragraph (b)(2) of this section that is attributable to the portion of the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section. For example, if a portion of the taxpayer's investment in the pass-through entity is attributable to property held directly or indirectly by the pass-through entity other than the real property on which a conservation easement is placed as described in paragraph (b)(3) of this section (including any other real property, cash, cash equivalents, digital assets, marketable securities, or other assets), that portion of the taxpayer's investment is not attributable to the portion of the real property on which a conservation easement is placed for purposes of paragraph (b)(1) of this section.

(4) *Example illustrating anti-stuffing rule.—(i) Facts.* An individual (A) purchased an interest in a partnership (P) that owns real property with a fair market value of \$500,000 and marketable securities with a fair market value of \$500,000. A is one of four equal investors in P, each of whom purchased its interest in P for \$250,000 of cash. With respect to an investor's \$250,000 payment for its interest in

P, the promotional materials stated that P expected to allocate a \$500,000 charitable contribution deduction to the investor (that is, a charitable deduction that is two times the amount an investor paid for its interest in P). After all four investors have purchased their interests in P, P donates a conservation easement to a qualified organization as defined in section 170(h)(3) of the Code and reports a \$2,000,000 charitable contribution deduction on its Form 1065 based on P obtaining an appraisal indicating that the value of the conservation easement is \$2,000,000. The Schedule K-1 (Form 1065) that P furnishes to A indicates that P allocated a \$500,000 charitable contribution deduction to A for the taxable year.

(ii) *Analysis.* Under paragraph (d)(2) of this section, for purposes of paragraph (b)(1) of this section, the amount of A's investment in P that is attributable to the real property on which a conservation easement is placed described in paragraph (b)(3) of this section is \$125,000 (that is, only the portion of the investment that is attributable to the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section). Because A's investment for purposes of the 2.5 times rule is \$125,000 and A's expected charitable contribution deduction, based on the promotional materials, is \$500,000 (that is, an expected deduction that is four times the investor's investment), the requirements of the 2.5 times rule of paragraph (b)(1) of this section are satisfied.

(e) *Participation in a syndicated conservation easement transaction—(1) In general.* Whether a taxpayer has participated in a syndicated conservation easement transaction described in paragraph (b) of this section is determined under §1.6011-4(c)(3)(i)(A).

(2) *Class of participants.* For purposes of §1.6011-4(c)(3)(i)(A), participants in a syndicated conservation easement transaction described in paragraph (b) of this section include—

- (i) An owner of a pass-through entity;
- (ii) A pass-through entity;
- (iii) Any other taxpayer whose Federal income tax return reflects tax consequences or a tax strategy arising from the syndicated conservation easement

transaction described in paragraph (b) of this section.

(3) *Exclusion.* A qualified organization to which the conservation easement is donated is not treated as a participant under §1.6011-4(c)(3)(i)(A) in a syndicated conservation easement transaction described in paragraph (b) of this section.

(f) *Application of section 4965.* A qualified organization is not treated under section 4965 of the Code as a party to the transaction described in paragraph (b) of this section.

(g) *Applicability date.* This section's identification of transactions that are the same as, or substantially similar to, the transactions described in paragraph (b) of this section as listed transactions for purposes of §1.6011-4(b)(2) and sections 6111 and 6112 of the Code is effective [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

Melanie R. Krause,  
*Acting Deputy Commissioner for Services and Enforcement.*

(Filed by the Office of the Federal Register December 06, 2022, 11:15a.m., and published in the issue of the Federal Register for December 08, 2022, 87 FR 75185)

## Notice of Proposed Rulemaking

### Single-Entity Treatment of Consolidated Groups for Specific Purposes

#### REG-113839-22

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that treat members of a consolidated group as a single United States shareholder in certain cases for purposes of section 951(a)(2)(B) of the Internal Revenue Code (the "Code"). The proposed regulations affect

consolidated groups that own stock of foreign corporations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by January 18, 2023. Requests for a public hearing must be submitted as prescribed in the "**Comments and Requests for a Public Hearing**" section.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-113839-22) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury ("Treasury Department") and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-113839-22), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

#### FOR FURTHER INFORMATION CONTACT:

Austin Diamond-Jones, (202) 317-5085 (Corporate) and Julie T. Wang, (202) 317-6975 (Corporate) regarding section 1502 and the proposed amendments to §1.1502-80, and Joshua P. Roffenbender, (202) 317-6934 (International) regarding sections 951, 951A, and 959; concerning submissions of comments and requests for a public hearing, Vivian Hayes at (202) 317-6901 (not toll-free numbers) or by email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred).

#### SUPPLEMENTARY INFORMATION:

##### Background

###### I. Overview

This document contains proposed amendments to 26 CFR part 1 under sections 1502 and 7805(a) of the Code (the "proposed regulations").

###### II. Sections 1501 and 1502

Pursuant to section 1501, an affiliated group of corporations may elect to file

a U.S. Federal income tax ("U.S. tax") return on a consolidated basis (such return, a "consolidated return"). Groups electing to file consolidated returns include all members' income items on a single return, in lieu of filing separate returns for each member.

Section 1502 authorizes the Secretary of the Treasury or their delegate ("Secretary") to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (such a group, a "consolidated group," as defined in §1.1502-1(h)) to clearly reflect the U.S. tax liability of the consolidated group and to prevent avoidance of such tax liability. For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of subtitle A of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the consolidated return regulations generally are defined in §1.1502-1.

#### III. Sections 951(a)(1)(A), 951A(a), and 959

Sections 951(a)(1)(A) and 951A(a) subject each United States shareholder (within the meaning of section 951(b) or section 953(c)(1)(A), if applicable) (each shareholder, a "U.S. shareholder") of a controlled foreign corporation (within the meaning of section 957 or section 953(c)(1)(B), if applicable) (a "CFC") to U.S. tax on certain income of the CFC, regardless of whether the CFC distributes the earnings and profits ("E&P") attributable to such income. To avoid double taxation, a corresponding amount of the CFC's E&P is designated as previously taxed earnings and profits ("PTEP") under section 959 and generally is not subject to U.S. tax at the U.S. shareholder level when distributed, whether to a U.S. shareholder or to an upper-tier CFC (such a distribution to a U.S. shareholder or an upper-tier CFC, a "section 959(a) distribution" or a "section 959(b) distribution," respectively). See section 959. Generally, PTEP is treated as distributed before E&P that is not PTEP ("non-PTEP"), and a section 959(a) distribution is treated as not a dividend. See section 959(c) and (d).

Under section 951(a)(1)(A), a U.S. shareholder of a CFC must include in gross income its pro rata share of the CFC's subpart F income (as defined in section 952) if the U.S. shareholder owns (within the meaning of section 958(a)) stock of the CFC on the last day of the CFC's taxable year on which it is a CFC (the "last relevant day"). Ownership of stock within the meaning of section 958(a) means stock owned directly and stock owned indirectly through foreign corporations and other foreign entities (including certain domestic entities to the extent treated as foreign entities under §1.958-1(d)(1)). For purposes of the remainder of this preamble, a reference to stock ownership means stock owned within the meaning of section 958(a).

A U.S. shareholder's pro rata share of a CFC's subpart F income for a taxable year of the CFC is calculated by first determining the amount described in section 951(a)(2)(A). This amount, which is determined based on the U.S. shareholder's proportionate share of a hypothetical distribution by the CFC, represents subpart F income (unreduced by distributions during the taxable year) allocable to stock of the CFC that the U.S. shareholder owns on the last relevant day. *See* section 951(a)(2)(A); §1.951-1(b) and (e). That amount is then reduced by the amount described in section 951(a)(2)(B) to arrive at the U.S. shareholder's pro rata share of the CFC's subpart F income. For a discussion of section 951(a)(2)(B), see part IV of this Background section.

Section 951A(a) requires a U.S. shareholder of a CFC to include in gross income its GILTI inclusion amount. *See* §1.951A-1(b). A U.S. shareholder's GILTI inclusion amount is determined by taking into account the U.S. shareholder's pro rata share of tested items (as defined in §1.951A-1(f)(5)) of certain CFCs in which the U.S. shareholder owns stock, such as tested income, tested loss, and qualified business asset investment. A U.S. shareholder's pro rata share of a CFC's tested items is determined in the same manner as a U.S. shareholder's pro rata share of a CFC's subpart F income under section 951(a)(2), subject to certain modifications. *See* section 951A(e)(1) and §1.951A-1(d).

In many cases, a significant portion of a CFC's income has been (or will be) subject to U.S. tax under section 951(a)(1)(A) or 951A(a), including by reason of the transition tax imposed under section 965, which taxed non-PTEP of certain foreign corporations under section 951(a)(1)(A). As a result, there is (and will continue to be) a substantial amount of PTEP in the U.S. tax system.

#### IV. Section 951(a)(2)(B)

Section 951(a)(2)(B) addresses cases in which stock of a CFC owned by a U.S. shareholder on the last relevant day was acquired by the U.S. shareholder during the CFC's taxable year. In these cases, section 951(a)(2)(B) generally reduces the U.S. shareholder's pro rata share of the CFC's subpart F income or tested income by the amount of distributions received by any other person during the taxable year as a dividend with respect to the acquired stock. However, the reduction is limited to the amount of the dividend that would have been received with respect to the acquired stock if the CFC had distributed an amount equal to its subpart F income for the taxable year multiplied by a fraction, the numerator of which is the number of days during the taxable year on which the U.S. shareholder did not own the acquired stock, and the denominator of which is the number of days during the taxable year (such fraction, the "section 951(a)(2)(B) fraction").

The reduction, as so limited, represents an amount of distributed income of the CFC on which the U.S. shareholder otherwise would be subject to U.S. tax under section 951(a)(1)(A) or 951A(a) by reason of owning the acquired stock on the last relevant day, but that is not allocable to the period during which the U.S. shareholder owned the acquired stock. The reduction is intended to prevent double taxation of subpart F income or tested income of the CFC that is distributed during the taxable year. In turn, the limitation on the reduction is intended to ensure that income allocable to the U.S. shareholder's ownership period with respect to the acquired stock is included in the U.S. shareholder's pro rata share. *See generally* Technical Explanation of the Revenue Act of 1962, S. Rep. No. 87-1881, at 239 (1962).

#### V. Application of Sections 951(a)(1)(A) and 951A(a) to Consolidated Groups

A consolidated group member's inclusion under section 951(a)(1)(A) is determined at the member level in the same manner as the inclusion is determined for any domestic corporation that is a U.S. shareholder of a foreign corporation.

A member's GILTI inclusion amount is determined by taking into account the aggregate of its pro rata share of the tested income of each tested income CFC (as defined in §1.951A-2(b)(1)) and its allocable share of the group's aggregate amount of other tested items. *See* §1.1502-51. As explained in the preamble to the final regulations in §1.1502-51, determining a member's GILTI inclusion amount entirely on a separate-entity basis would undermine the clear reflection of the U.S. tax liability of the consolidated group as a whole. In contrast, the adopted approach creates "consistent results regardless of which member of a consolidated group owns the stock of the CFCs[,] . . . removes incentives for inappropriate planning, and also eliminates traps for the unwary." *See* TD 9866, 84 Fed. Reg. 29288, 29318.

#### Explanation of Provisions

##### I. In General

The Treasury Department and the IRS are aware that some consolidated groups are taking the position that the group's aggregate inclusions under sections 951(a)(1)(A) and 951A(a) are reduced by changing the location of ownership of stock of a CFC within the group. Specifically, taxpayers are taking the position that a group's aggregate pro rata share of a lower-tier CFC's subpart F income or tested income is reduced under section 951(a)(2)(B) by reason of a section 959(b) distribution made by the lower-tier CFC, together with a direct or indirect acquisition of stock of the lower-tier CFC by a member from another member. Given the substantial amount of PTEP in the U.S. tax system following the enactment of sections 951A and 965, the Treasury Department and the IRS understand that taxpayers are taking this position with increasing frequency in an attempt to significantly reduce their

income inclusions under sections 951(a)(1)(A) and 951A(a).

For example, assume that M1 and M2 are members of a consolidated group (the “P group”). M1 directly owns all the stock of an upper-tier CFC (“CFC1”), which directly owns all the stock of a lower-tier CFC (“CFC2”). M2 directly owns all the stock of another CFC (“CFC3”). During a taxable year of CFC2, CFC2 makes a section 959(b) distribution to CFC1. On a day other than the last day of the same taxable year, CFC1 transfers all the stock of CFC2 to CFC3 in a transaction that qualifies as a reorganization described in section 368(a)(1)(B). As a result, M2 indirectly acquires stock of CFC2, which M2 continues to own throughout the rest of the taxable year.

The Treasury Department and the IRS understand that some consolidated groups are taking the position that section 951(a)(2)(B) reduces M2’s pro rata share of CFC2’s subpart F income or tested income. This position is based in part on the assertion that, for purposes of the section 951(a)(2)(B) fraction, M2 is not treated as owning stock of CFC2 on days on which the stock is owned by M1 (or another member of the group).

This position does not clearly reflect a consolidated group’s U.S. tax liability. The group’s aggregate pro rata shares of subpart F income and tested income of a CFC – and thus the group’s aggregate inclusions under sections 951(a)(1)(A) and 951A(a), respectively – should not be affected when ownership of stock of the CFC moves within the group.

In addition, this position is inconsistent with section 951(a)(2)(B) and the purposes of that provision. The amount described in section 951(a)(2)(B) represents certain distributed income of a CFC on which a U.S. shareholder otherwise would be subject to U.S. tax under section 951(a)(1)(A) or 951A(a) by reason of owning stock of the CFC on the last relevant day. E&P that already has been subject to U.S. tax, such as E&P comprising a section 959(b) distribution, cannot represent such income. A position treating such E&P as giving rise to a section 951(a)(2)(B) reduction inappropriately reduces U.S. taxation of a CFC’s subpart F income or tested income. Furthermore, the reduction to U.S. tax could be permanent to the extent

that a deduction under section 245A(a) is allowed when E&P corresponding to the untaxed income ultimately is distributed to a U.S. shareholder.

To address the inappropriate outcomes claimed under this position and to clearly reflect a consolidated group’s U.S. tax liability, the proposed regulations treat members of a consolidated group as a single U.S. shareholder for certain purposes, as described in part II of this Explanation of Provisions section. As described in part IV of this Explanation of Provisions, the Treasury Department and the IRS are further considering the interaction of sections 951(a)(2)(B) and 959(b).

## II. Consolidated Groups Treated as a Single U.S. Shareholder for Purposes of Applying Section 951(a)(2)(B) with Respect to Section 959(b) Distributions

The proposed regulations treat members of a consolidated group as a single U.S. shareholder for purposes of applying section 951(a)(2)(B) in the context of section 959(b) distributions. See proposed §1.1502-80(j)(1). When members are treated as a single U.S. shareholder, direct or indirect acquisitions of stock of a CFC by one member from another member do not give rise to a section 951(a)(2)(B) reduction, because the numerator of the section 951(a)(2)(B) fraction reflects the period that both members owned stock of the CFC. As a result, the group’s aggregate inclusions under sections 951(a)(1)(A) and 951A(a) with respect to a CFC are not reduced under section 951(a)(2)(B) by reason of a section 959(b) distribution made by the CFC and changes in the location of ownership of stock of the CFC within the group. See proposed §1.1502-80(j)(2), *Example 1* and *Example 2*. The Treasury Department and the IRS have determined that this outcome facilitates the clear reflection of the U.S. tax liability of a consolidated group.

The proposed regulations do not apply in the context of dividends composed of non-PTEP. When such a dividend gives rise to a reduction under section 951(a)(2)(B), other rules may result in the dividend being (directly or indirectly) included in the gross income of a U.S. shareholder. See, e.g., §1.245A-5 (limiting the deduction under section 245A(a)

and the look-through exception to subpart F income under section 954(c)(6)).

In addition to the proposed regulations, other authorities or common law doctrines may apply to recast a transaction or otherwise affect the tax treatment of a transaction. See, e.g., sections 482 and 7701(o) and §§1.701-2 and 1.1502-13(h).

## III. Applicability Date

The proposed regulations are proposed to apply to taxable years for which the original consolidated return is due (without extensions) after the date of publication in the **Federal Register** of a Treasury Decision adopting these rules as final regulations. See section 1503(a).

## IV. No Inference

No inference is intended with regard to the treatment of transactions involving a consolidated group before the applicability date of the proposed regulations, including under §1.1502-13. Additionally, no inference is intended with regard to the treatment of similar transactions not involving a consolidated group, or with regard to whether section 959(b) distributions are taken into account under section 951(a)(2)(B). The Treasury Department and the IRS are further considering the interaction of sections 951(a)(2)(B) and 959(b), and any additional guidance issued relating to those sections, including guidance to prevent abuse, may be retroactive.

## Special Analyses

### I. Regulatory Planning and Review—*Economic Analysis*

The Administrator of the Office of Information and Regulatory Affairs (“OIRA”), Office of Management and Budget, has determined that this proposed rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866. Therefore, OIRA has not reviewed this proposed rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (“OMB”).

## II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts provided on all Forms 1120. Therefore, these proposed regulations would not create additional obligations for, or impose an economic impact on, small entities. Accordingly, the Secretary certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

## III. Section 7805(f)

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately \$165 million. These proposed regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

## V. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

## Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the “ADDRESSES” section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. In addition, the Treasury Department and the IRS continue to study different applications of section 951(a)(2)(B) when CFC interests have been transferred in intercompany transactions and request comments on the interaction of section 951(a)(2)(B) and §1.1502-13. Any comments submitted will be made available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

## Statement of Availability of IRS Documents

Any IRS Revenue Procedures, Revenue Rulings, Notices, or other guidance

cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at [www.irs.gov](http://www.irs.gov).

## Drafting Information

The principal authors of these regulations are Joshua P. Roffenbender, Office of Associate Chief Counsel (International), and Jeremy Aron-Dine and Gregory J. Galvin, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and record-keeping requirements.

## Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

**Par. 2.** In §1.1502-80, paragraphs (i) and (j) are added to read as follows:

*§1.1502-80 Applicability of other provisions of law.*

\* \* \* \* \*

(i) [Reserved]

(j) *Special rules for application of section 951(a)(2)(B) to distributions to which section 959(b) applies—(1) Single United States shareholder treatment.* In determining the amount described in section 951(a)(2)(B) that is attributable to distributions to which section 959(b) applies, members of a group are treated as a single United States shareholder (within the meaning of section 951(b) (or section 953(c)(1)(A), if applicable)) for purposes of determining the part of the year during which such shareholder did not own (within



the meaning of section 958(a)) the stock described in section 951(a)(2)(A). The purpose of this paragraph (j) is to facilitate the clear reflection of income of a consolidated group by ensuring that the location of ownership of stock of a foreign corporation within the group does not affect the amount of the group's income by reason of sections 951(a)(1)(A) and 951A(a).

(2) *Examples.* The following examples illustrate the application of paragraph (j) (1) of this section. For purposes of the examples in this paragraph (j)(2): M1 and M2 are members of a consolidated group of which P is the common parent (P group); each of CFC1, CFC2, and CFC3 is a controlled foreign corporation (within the meaning of section 957(a)) with the U.S. dollar as its functional currency (within the meaning of section 985); the taxable year of all entities is the calendar year for Federal income tax purposes; and a reference to stock owned means stock owned within the meaning of section 958(a). These examples do not address common law doctrines or other authorities that might apply to recast a transaction or to otherwise affect the tax treatment of a transaction.

(i) *Example 1. Intercompany transfer of stock of a controlled foreign corporation—(A) Facts.* Throughout Year 1, M1 directly owns all the stock of CFC1, which directly owns all the stock of CFC2.

In Year 1, CFC2 has \$100x of subpart F income (as defined in section 952). M1's pro rata share of CFC2's subpart F income for Year 1 is \$100x, which M1 includes in its gross income under section 951(a)(1)(A). In Year 2, CFC2 has \$80x of subpart F income and distributes \$80x to CFC1 (the CFC2 Distribution). Section 959(b) applies to the entire CFC2 Distribution. On December 29, Year 2, M1 transfers all of its CFC1 stock to M2 in an exchange described in section 351(a). As a result, on December 31, Year 2 (the last day of Year 2 on which CFC2 is a controlled foreign corporation), M2 owns 100% of the stock of CFC1, which owns 100% of the stock of CFC2.

(B) *Analysis.* Under paragraph (j)(1) of this section, in determining the amount described in section 951(a)(2)(B) that is attributable to the CFC2 Distribution, all members of the P group are treated as a single United States shareholder for purposes of determining the part of Year 2 during which such shareholder did not own the stock of CFC2. Thus, the ratio of the number of days in Year 2 that such United States shareholder did not own the stock of CFC2 to the total number of days in Year 2 is 0/365. The amount described in section 951(a)(2)(B) is \$0, M2's pro rata share of CFC2's subpart F income for Year 2 is \$80x (\$80x - \$0), and M2 must include \$80x in its gross income under section 951(a)(1)(A).

(ii) *Example 2. Transfer of stock of a controlled foreign corporation between controlled foreign corporations—(A) Facts.* The facts are the same as the facts of *Example 1*, except that M1 does not transfer its CFC1 stock to M2. Additionally, throughout Year 1 and from January 1, Year 2, to December 29, Year 2, M2 directly owns all 90 shares of the only class of stock of CFC3. Further, on December 29, Year 2, CFC3 acquires all the CFC2 stock from CFC1 in exchange for 10 newly issued shares of the same class of CFC3 stock in a transaction described in

section 368(a)(1)(B). As a result, on December 31, Year 2, M1 owns 10% of the stock of CFC2, and M2 owns 90% of the stock of CFC2.

(B) *Analysis.* Under paragraph (j)(1) of this section, in determining the amount described in section 951(a)(2)(B) that is attributable to the portion of the CFC2 Distribution with respect to each of the CFC2 stock that M1 owns on December 31, Year 2, and the CFC2 stock that M2 owns on that day, all members of the P group are treated as a single United States shareholder for purposes of determining the part of Year 2 during which such shareholder did not own such stock. In each case, the ratio of the number of days in Year 2 that such United States shareholder did not own such stock to the total number of days in Year 2 is 0/365, and the amount described in section 951(a)(2)(B) is \$0. M1's and M2's pro rata shares of CFC2's subpart F income for Year 2 are \$8x (\$8x - \$0) and \$72x (\$72x - \$0), respectively, and M1 and M2 must include \$8x and \$72x in gross income under section 951(a)(1)(A), respectively.

(3) *Applicability date.* This paragraph (j) applies to taxable years for which the original consolidated Federal income tax return is due (without extensions) after the date a Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Melanie R. Krause,  
*Acting Deputy Commissioner for Services and Enforcement.*

(Filed by the Office of the Federal Register December 9, 2022, 11:15a.m., and published in the issue of the Federal Register for December 14, 2022, 87 FR 76430)

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at [www.irs.gov/irb/](http://www.irs.gov/irb/).

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## **We Welcome Comments About the Internal Revenue Bulletin**

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page ([www.irs.gov](http://www.irs.gov)) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.