

(A) accepts deposits in the ordinary course of a banking or similar business,

(B) as a substantial portion of its business, holds financial assets for the account of others, or

(C) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

(6) Recalcitrant account holder

The term “recalcitrant account holder” means any account holder which—

(A) fails to comply with reasonable requests for the information referred to in subsection (b)(1)(A) or (c)(1)(A), or

(B) fails to provide a waiver described in subsection (b)(1)(F) upon request.

(7) Passthru payment

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

(e) Affiliated groups

(1) In general

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

(A) with respect to United States accounts maintained by the foreign financial institution, and

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

(2) Expanded affiliated group

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

(A) by substituting “more than 50 percent” for “at least 80 percent” each place it appears, and

(B) without regard to paragraphs (2) and (3) of section 1504(b).

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

(f) Exception for certain payments

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

(1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(2) any international organization or any wholly owned agency or instrumentality thereof,

(3) any foreign central bank of issue, or

(4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

(Added Pub. L. 111-147, title V, § 501(a), Mar. 18, 2010, 124 Stat. 97.)

PRIOR PROVISIONS

A prior section 1471, act Aug. 16, 1954, ch. 736, 68A Stat. 361, related to recovery of excessive profits on government contracts, prior to repeal by Pub. L. 94-455, title XIX, § 1901(b)(13)(A), Oct. 4, 1976, 90 Stat. 1840.

EFFECTIVE DATE

Pub. L. 111-147, title V, § 501(d), Mar. 18, 2010, 124 Stat. 106, provided that:

“(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the amendments made by this section [enacting this chapter and amending sections 6414, 6501, 6513, 6611, and 6724 of this title] shall apply to payments made after December 31, 2012.

“(2) **GRANDFATHERED TREATMENT OF OUTSTANDING OBLIGATIONS.**—The amendments made by this section shall not require any amount to be deducted or withheld from any payment under any obligation outstanding on the date which is 2 years after the date of the enactment of this Act [Mar. 18, 2010] or from the gross proceeds from any disposition of such an obligation.

“(3) **INTEREST ON OVERPAYMENTS.**—The amendment made by subsection (b) [amending section 6611 of this title] shall apply—

“(A) in the case of such amendment’s application to paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986, to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act,

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

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

§ 1472. Withholdable payments to other foreign entities

(a) In general

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

(1) the beneficial owner of such payment is such entity or any other non-financial foreign entity, and

(2) the requirements of subsection (b) are not met with respect to such beneficial owner,

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

(b) Requirements for waiver of withholding

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

(1) such beneficial owner or the payee provides the withholding agent with either—

(A) a certification that such beneficial owner does not have any substantial United States owners, or

(B) the name, address, and TIN of each substantial United States owner of such beneficial owner,

(2) the withholding agent does not know, or have reason to know, that any information provided under paragraph (1) is incorrect, and

(3) the withholding agent reports the information provided under paragraph (1)(B) to the Secretary in such manner as the Secretary may provide.

(c) Exceptions

Subsection (a) shall not apply to—

(1) except as otherwise provided by the Secretary, any payment beneficially owned by—

(A) any corporation the stock of which is regularly traded on an established securities market,

(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation described in subparagraph (A),

(C) any entity which is organized under the laws of a possession of the United States and which is wholly owned by one or more bona fide residents (as defined in section 937(a)) of such possession,

(D) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(E) any international organization or any wholly owned agency or instrumentality thereof,

(F) any foreign central bank of issue, or

(G) any other class of persons identified by the Secretary for purposes of this subsection, and

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

(d) Non-financial foreign entity

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

(Added Pub. L. 111-147, title V, §501(a), Mar. 18, 2010, 124 Stat. 102.)

§ 1473. Definitions

For purposes of this chapter—

(1) Withholdable payment

Except as otherwise provided by the Secretary—

(A) In general

The term “withholdable payment” means—

(i) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States, and

(ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

(B) Exception for income connected with United States business

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

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

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

(2) Substantial United States owner

(A) In general

The term “substantial United States owner” means—

(i) with respect to any corporation, any specified United States person which owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value),

(ii) with respect to any partnership, any specified United States person which owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership, and

(iii) in the case of a trust—

(I) any specified United States person treated as an owner of any portion of such trust under subpart E of part I of subchapter J of chapter 1, and

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

(B) Special rule for investment vehicles

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

(3) Specified United States person

Except as otherwise provided by the Secretary, the term “specified United States person” means any United States person other than—

(A) any corporation the stock of which is regularly traded on an established securities market,

(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation the stock of which is regularly traded on an established securities market,

(C) any organization exempt from taxation under section 501(a) or an individual retirement plan,

(D) the United States or any wholly owned agency or instrumentality thereof,

(E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(F) any bank (as defined in section 581),

(G) any real estate investment trust (as defined in section 856),