

Statutory Notes and Related Subsidiaries

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),

(H) any regulated investment company (as defined in section 851),

(I) any common trust fund (as defined in section 584(a)), and

(J) any trust which—

(i) is exempt from tax under section 664(c), or

(ii) is described in section 4947(a)(1).

(4) Withholding agent

The term “withholding agent” means all persons, in whatever capacity acting, having

the control, receipt, custody, disposal, or payment of any withholdable payment.

(5) Foreign entity

The term “foreign entity” means any entity which is not a United States person.

(Added Pub. L. 111-147, title V, § 501(a), Mar. 18, 2010, 124 Stat. 103.)

§ 1474. Special rules**(a) Liability for withheld tax**

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

(b) Credits and refunds**(1) In general**

Except as provided in paragraph (2), the determination of whether any tax deducted and withheld under this chapter results in an overpayment by the beneficial owner of the payment to which such tax is attributable shall be made as if such tax had been deducted and withheld under subchapter A of chapter 3.

(2) Special rule where foreign financial institution is beneficial owner of payment**(A) In general**

In the case of any tax properly deducted and withheld under section 1471 from a specified financial institution payment—

(i) if the foreign financial institution referred to in subparagraph (B) with respect to such payment is entitled to a reduced rate of tax with respect to such payment by reason of any treaty obligation of the United States—

(I) the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate, and

(II) no interest shall be allowed or paid with respect to such credit or refund, and

(ii) if such foreign financial institution is not so entitled, no credit or refund shall be allowed or paid with respect to such tax.

(B) Specified financial institution payment

The term “specified financial institution payment” means any payment if the beneficial owner of such payment is a foreign financial institution.

(3) Requirement to identify substantial United States owners

No credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under this chapter unless the beneficial owner of the payment provides the Secretary such information as the Secretary may require to determine whether such beneficial owner is a United States owned foreign entity (as defined in section 1471(d)(3)) and the identity of any substantial United States owners of such entity.