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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9809]

RIN 1545-BL72

RIN 1545-BN79

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9809) that were published in the **Federal Register** on Friday, January 6, 2017 (82 FR 2124). The final and temporary regulations under chapter 4 of the Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) relate to information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities.

DATES: These corrections are effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and are applicable beginning January 6, 2017.

FOR FURTHER INFORMATION CONTACT: Kamela Nelan at (202) 317- 6942 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9809) that are the subject of this correction are under sections 1471 through 1474 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9809) contain errors which may prove to be misleading and need to be clarified. Some portions of TD 9809 could not be incorporated due to inaccurate amendatory instructions. Several of the correcting amendments to TD 9809 are needed to clarify or correct the results of inaccurate amendatory instructions. These correcting amendments also include the addition, deletion, or modification of regulatory language to clarify the relevant provisions to meet their intended purposes or for consistency with other related provisions of these regulations. The addition of final regulatory language includes language that was inadvertently removed in a prior amendment to the final regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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. Section 1.1471-1T is amended by revising the third sentence of paragraph (b)(99) to read as follows:

§ 1.1471-1T Scope of chapter 4 and definitions (temporary).

* * * * *

(b) * * *

(99) * * * An address that is provided subject to instructions to hold all mail to that address must be accompanied by certain documentary evidence described in §1.1441-

1(c)(38)(ii). * * *

* * * * *

Par. 3. Section 1.1471-2 is amended by revising the third sentence of paragraph (a)(2)(i) to read as follows:

§ 1.1471-2 Requirement to deduct and withhold tax on withholdable payments to certain

FFIs.

(a) * * *

(2) * * *

(i) * * * Further, a withholding agent is not required to withhold on a payment that it can reliably associate with documentation indicating that the payee is a U.S. branch treated as a U.S. person (as defined in §1.1471-1(b)(135)) or is a U.S. branch of an FFI that is not treated as a U.S. person but that applies the rules described in §1.1471-4(d)(2)(iii)(C). * * *

* * * * *

Par. 4. Section 1.1471-3 is amended by revising paragraph (b)(3) to read as follows:

§ 1.1471-3 Identification of payee.

* * * * *

(b) * * *

(3) Determination of whether the payment is made to a QI, WP, or WT. A withholding agent may treat the person who receives a payment as a QI, WP, or WT if the withholding agent can reliably associate the payment with a valid Form W-8IMY, as described in paragraph

(c)(3)(iii) of this section, that indicates that the person who receives the payment is a QI, WP, or WT, provides the person's QI-EIN, WP-EIN, or WT-EIN, and the person's GIIN, if applicable.

* * * * *

Par. 5. Section 1.1471-4 is amended by revising paragraph (d)(3)(ii)(E) and adding a heading to paragraph (d)(7) to read as follows:

§ 1.1471-4 FFI agreement.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(E) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(v) of this section and its accompanying instructions.

* * * * *

(7) Special reporting rules with respect to the 2014 and 2015 calendar years—

* * * * *

Par. 6. Section 1.1471-4T is amended by revising paragraph (d)(2)(ii)(G) introductory text to read as follows:

§ 1.1471-4T FFI agreement (temporary).

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(G) Combined reporting on Form 8966 following merger or bulk acquisition. If a participating FFI (successor) acquires accounts of another participating FFI (predecessor) in a merger or bulk acquisition of accounts, the successor may assume the predecessor's obligations to report the acquired accounts under paragraph (d) of this section with respect the calendar year in which the merger or acquisition occurs (acquisition year), provided that the requirements in paragraphs (d)(2)(ii)(G)(1) through (4) of this section are satisfied. If the requirements of paragraphs (d)(2)(ii)(G)(1) through (4) of this section are not satisfied, both the predecessor and the successor are required to report the acquired accounts for the portion of the acquisition year that it maintains the account.

* * * * *

Par. 7. Section 1.1471-5 is amended by adding paragraph (f)(1)(i)(F)(3)(viii) and revising paragraph (f)(2)(iii)(C) to read as follows:

§ 1.1471-5 Definitions applicable to section 1471.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) * * *

(3) * * *

(viii) Has not had its status as a sponsoring entity revoked.

* * * * *

(2) * * *

(iii) * * *

(C) Twenty or fewer individuals own all of the debt and equity interests in the FFI (disregarding debt interests owned by U.S. financial institutions, participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100 percent of the equity interests in the FFI and is itself a sponsored FFI under this paragraph (f)(2)(iii)).

* * * * *

Par. 8. Section 1.1474-1 is amended by:

1. Revising paragraphs (d)(4)(i)(C)(2) and (3).
2. Adding paragraph (d)(4)(ii)(C).
3. Revising the heading of paragraph (d)(4)(iii), and paragraphs (d)(4)(iii)(A) and (B).

The revisions and addition read as follows:

§ 1.1474-1 Liability for withheld tax and withholding agent reporting.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(C) * * *

(2) If the U.S. branch of an FFI is not treated as a U.S. person and applies the rules described in §1.1471-4(d)(2)(iii)(C) and provides the withholding agent with a withholding certificate that transmits information regarding its reporting pools referenced in paragraph (d)(4)(i)(B) of this section or information regarding each recipient that is an account holder or payee of the U.S. branch, the withholding agent must complete a separate Form 1042-S issued to the U.S. branch for each such pool to the extent required on the form and its accompanying

instructions or must complete a separate Form 1042-S issued to each recipient whose documentation is associated with the U.S. branch's withholding certificate as described in paragraph (d)(4)(ii)(A) of this section and report the U.S. branch as an entity not treated as a recipient; or

(3) If the U.S. branch of an FFI is not treated as a U.S. person and applies the rules described in §1.1471-4(d)(2)(iii)(C) to the extent it fails to provide sufficient information regarding its account holders or payees, the withholding agent shall report the recipient of the payment as an unknown recipient to the extent recipient information is not provided and report the U.S. branch as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

* * * * *

(ii) * * *

(C) Disregarded entities. If a U.S. withholding agent makes a payment to a disregarded entity and receives a valid withholding certificate or other documentary evidence from the person that is the single owner of such disregarded entity, the withholding agent must file a Form 1042-S treating the single owner as the recipient in accordance with the instructions to the Form 1042-S.

(iii) Reporting by participating FFIs and deemed-compliant FFIs (including QIs, WPs, and WTs) and U.S. branches of FFIs not treated as U.S. persons—(A) In general. Except as otherwise provided in paragraph (d)(4)(iii)(B) (relating to NQIs, NWP, NWTs, and FFIs electing under section 1471(b)(3)) and §1.1471-4(d)(2)(ii)(F) (relating to transitional payee-specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, or WT), and a U.S. branch of an FFI that is not treated as a

U.S. person that applies the rules described in §1.1471-4(d)(2)(iii)(C) that makes a payment that is a chapter 4 reportable amount to a recalcitrant account holder or nonparticipating FFI must complete a Form 1042-S to report such payments. A participating FFI or registered deemed-compliant FFI (including a QI, WP, or WT), and a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in §1.1471-4(d)(2)(iii)(C) may report in pools consisting of its recalcitrant account holders and payees that are nonparticipating FFIs. With respect to recalcitrant account holders, the FFI may report in pools consisting of recalcitrant account holders within a particular status described in §1.1471-4(d)(6) and within a particular income code. Except as otherwise provided in §1.1471-4(d)(2)(ii)(F), with respect to payees that are nonparticipating FFIs, the FFI may report in pools consisting of one or more nonparticipating FFIs that fall within a particular income code and within a particular status code described in the instructions to Form 1042-S. Alternatively, a participating FFI or registered deemed-compliant FFI (including a QI, WP, or WT) and a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in §1.1471-4(d)(2)(iii)(C) may (and a certified deemed-compliant FFI is required to) perform payee-specific reporting to report a chapter 4 reportable amount paid to a recalcitrant account holder or a nonparticipating FFI when withholding was applied (or should have applied) to the payment.

(B) Special reporting requirements of participating FFIs, deemed-compliant FFIs, FFIs that make an election under section 1471(b)(3), and U.S. branches of FFIs not treated as U.S. persons. Except as otherwise provided in §1.1471-4(d)(2)(ii)(F), a participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT, and a U.S. branch of an FFI that is not treated as a U.S. person that applies the rules described in §1.1471-4(d)(2)(iii)(C) or an FFI that has made an election under section 1471(b)(3) and has provided sufficient information to its withholding

agent to withhold and report the payment is not required to report the payment on Form 1042-S as described in paragraph (d)(4)(iii)(A) of this section if the payment is made to a nonparticipating FFI or recalcitrant account holder and its withholding agent has withheld the correct amount of tax on such payment and correctly reported the payment on a Form 1042-S. Such FFI or branch is required to report a payment, however, when the FFI knows, or has reason to know, that less than the required amount has been withheld by the withholding agent on the payment or the withholding agent has not correctly reported the payment on Form 1042-S. In such case, the FFI or branch must report on Form 1042-S to the extent required under paragraph (d)(4)(iii)(A) of this section. See, however, §1.1471-4(d)(6) for the requirement to report certain aggregate information regarding accounts held by recalcitrant account holders on Form 8966, “FATCA Report,” regardless of whether withholdable payments are made to such accounts.

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Martin V. Franks
Chief, Publications and Regulations Branch
Legal Processing Division
Associate Chief Counsel
(Procedure and Administration)

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