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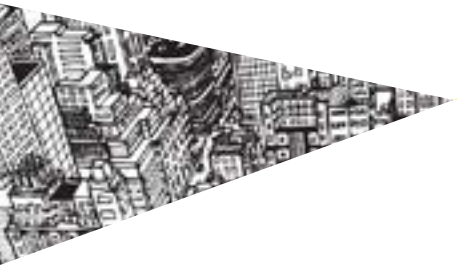

What you need to know about the final FFI Agreement

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On 26 December 2013, the IRS released Revenue Procedure 2014-13 (initially 2014-10), which contains the final version of the Foreign Financial Institution Agreement ("FFIA," "final FFIA," "final FFI agreement," or "final agreement"). The revenue procedure is applicable to foreign financial institutions (FFIs) entering into FFI agreements with the IRS to be treated as participating FFIs for FATCA purposes ("PFFIs" or "participating FFIs"), including Reporting FFIs in Model 2 IGA countries (e.g., Switzerland and Japan) including branches of FFIs treated as reporting financial institutions under an applicable Model 2 IGA. As a reminder, Reporting FFIs in Model 1 IGA countries are not required to enter into FFIAs. The effective date for the revenue procedure is 1 January, 2014.

The focus of this Alert is primarily to highlight certain noteworthy changes between the final FFIA and the draft agreement; however, we also address some provisions that did not change for continuity purposes or because the provision is important and worthy of being emphasized.

Executive summary

The revenue procedure includes additions, deletions, corrections and clarifications to the draft FFI agreement, and notes that two sets of temporary regulations are expected be issued in early 2014.

- **Pending temporary regulations**: Several cross-references in the final FFI agreement cannot be found in the current regulations because such references are apparently to the two sets of temporary regulations to be issued "soon."
  - **Temporary FATCA regulations**: One set of temporary regulations will provide clarifications and modifications to the final chapter 4 regulations (hereafter, referred to as the "temporary chapter 4 regulations").

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- **Temporary coordinating regulations**: The second set of temporary regulations will provide coordinating rules under chapters 3 (Section 1441 reporting and withholding on payments to non-US persons), chapter 4 (FATCA), and chapter 61 (reporting and withholding on payments to US persons) (hereafter, referred to as the "temporary coordinating regulations").

- **Clarifications/corrections**: Several clarifications/corrections were made in the final FFIA, including the following:
  - With respect to a pre-existing account holder, withholding on a documented nonparticipating FFI ("NPFFI" or nonparticipating FFI") begins when the payee is documented as an NPFFI, even if such documentation is provided to the withholding agent prior to the expiration of the transition period allowed for performing due diligence on pre-existing account holders.
  - New definitions clarify and conform the FFIA to the chapter 4 regulations and the soon to be issued temporary chapter 4 regulations, including, among many others, defining and clarifying the terms "chapter 4 withholding rate pool," "chapter 4 reporting pool," and "entity payee."
  - Reporting Model 2 FFIs must document the status of entity payees who are not account holders.
  - Reporting Model 2 FFIs shall apply the presumption rules in the regulations prior to making withholdable payments to undocumented entity payees, instead of the due diligence rules of Annex I or final FFIA. An entity payee is a defined as a payee that is an entity and that is not the account holder.
  - Withholding requirements with respect to limited branches or limited FFIs are clarified and highlight a PFFI's obligation to withhold on a withholdable payment it makes to, or receives on behalf of, a limited branch or limited FFI, when the PFFI has reason to know that a withholdable payment was made to a limited branch of a PFFI or registered deemed-compliant FFI. The FFIA highlights that reason to know includes receiving a direction to pay a limited branch or limited FFI to an address in a jurisdiction other than that the limited branch or limited FFI has identified as address to receive the payment.
  - The FFIA includes a new rule that a PFFI that chooses to escrow tax withheld on payments to dormant accounts may not delegate that responsibility to the withholding agent from which it receives the payment; rather, it must escrow the amount itself.
  - The 30-day period in the draft FFIA for treating otherwise valid documentation that has been rendered unreliable due to a change in circumstances was corrected to a 90-day period in the final agreement.
  - With respect to obligations that are not financial accounts, the final FFIA modifies the draft agreement to include the word "offshore" before the word obligation and requires a participating FFI to withhold and report on a withholdable payment made to a payee that is (or is presumed to be) an NPFFI with respect to an offshore obligation that is not an account.
  - Section 9 of the FFIA, includes a reminder for PFFIs receiving payments with respect to an offshore obligation as an intermediary or flow through entity that documents itself using alternative documentation (e.g., written statement that includes a global intermediary identification number ("GIIN")) in lieu of Form W-8IMY to provide sufficient information on its underlying payees to the withholding agent to prevent such payees from being classified as recalcitrant account holders or NPFFIs.
  - Section 11 of the FFIA clarifies that a limited FFI that is a member of an FFI group will cause the entire FFI group to lose its "good FFI status" if the limited FFI does not cease to be a limited FFI by the earlier of (1) the beginning of the third calendar quarter following the date that a member ceases to be a limited FFI, unless the

member becomes a PFFI or registered deemed compliant FFI , or (2) the expiration of the transition rule for limited FFIs and limited branches under the regulations, unless the member becomes a PFFI or registered deemed compliant FFI and no member of the group maintains a limited branch. Note, the transitional provision set forth in the regulations at Treas. Reg. Section 1.1471-4(e)(3)(iv) is more straightforward and easier to follow on this point.

- **Two year transition period for Reporting Model 2 FFIs to choose diligence procedures without being bound to those procedures**: The final FFIA includes a new two year transition period during which a Reporting Model 2 FFI may apply the due diligence procedures described in the FFI agreement in lieu of the due diligence rules in Annex I of an applicable Model 2 IGA, without being bound to a particular set of due diligence rules. The application of this provision must not frustrate the purpose of the Model 2 IGA.

Final FFI Agreement

The final FFI agreement applies to PFFIs and Reporting Model 2 FFIs including branches of FFIs treated as reporting financial institutions under an applicable Model 2 IGA, as modified by the Model 2 IGA, sets forth some new definitions not in the draft agreement, and highlights items we can anticipate will be included in the temporary chapter 4 regulations. The final agreement deletes a few definitions that were in the draft agreement and modifies other definitions by inserting cross references to the final regulations. The numbering of the definitions cross referenced in the final regulations will be accurate only if upcoming temporary chapter 4 regulations add the new definitions in the final agreement.

As with the draft agreement, the final agreement will not actually be signed, but an FFI will agree to the terms of the FFIA by completing Part 4, *Signature*, on Form 8957 (either on a hard copy form or via the IRS' FATCA registration website, i.e., "the portal"). Unless renewed, the FFIA will expire on 31 December 2016.

FFIA Section 3. Due diligence requirements for documentation and identification of account holders and nonparticipating FFI payees

The agreement provides additional guidance on the due diligence procedures of participating FFIs. The agreement adds non-US accounts as a type of account that the participating FFI must identify. The draft agreement identified only US accounts, accounts held by recalcitrant account holders and accounts held by nonparticipating FFIs. The agreement clarifies that the procedures described in Section 3 of the final agreement apply to determine if withholding is required under Section 4 of the final agreement.

Reporting Model 2 FFI due diligence

The final agreement provides additional guidance in relation to the due diligence responsibilities of Reporting Model 2 FFIs. The final agreement corrects a point in the draft agreement, which required a Reporting Model 2 FFI to apply the due diligence procedures under IGA Annex I unless the Model 2 IGA jurisdiction *permits* the Reporting Model 2 FFI to apply the due diligence procedures under Section 3 of the FFIA. Under the final agreement, a Reporting Model 2 FFI will have the option to elect to apply either the due diligence procedures as set forth in Annex 1 of the applicable IGA or the due diligence procedures as set forth in the FFI agreement. Also, the final FFIA adds a new two year transitional period where a Reporting Model 2 FFI may apply either the due diligence provisions in Annex I or the FFIA without being bound to a particular set of due diligence rules. The chosen due diligence provision may be applied to groups of accounts (e.g., by business line) or by each Section of Annex I (e.g., pre-existing entity accounts).

Other than as stated in the transition rule, the final agreement retains the rule under which a Reporting Model 2 FFI that chooses to apply the due diligence rules of the FFIA to a group of accounts, must continue to do so every year thereafter unless there has been a material modification to the FFIA. Also, the final agreement

clarifies the requirement in the draft agreement which provides a Reporting Model 2 FFI must document the FATCA status of any entity payees who are not account holders.

- EY observes: Permission for a Reporting Model 2 FFI to revert to the due diligence procedures under IGA Model 2 Annex I after electing to follow the due diligence procedures under the FFIA with respect to a clearly identified group of accounts is a liberalizing change, but it applies only for the first two years after the applicable Model 2 IGA is signed. Thereafter, reverting to the due diligence procedures under IGA Annex I is not permitted, absent a material modification. As a result, Reporting Model 2 FFIs should carefully consider both options before making a determination as to which due diligence standards it will apply.
- EY observes: Regardless of which due diligence procedures a Reporting Model 2 FFI elects to use, the FFI must still document "entity payees" who are not account holders if withholdable payments will be paid to the entity. This is inconsistent with the documentation procedure in Annex I of the Model 2 IGA, which currently only requires that the identification and documentation procedures be applied to account holders when withholdable payments are made.
- EY observes: The FFIA is silent on how the election will be made. Similar to other income tax elections, the election will likely be made simply by using the desired due diligence rule.

As under the draft agreement, a US branch of a participating FFI that is treated as a US person must apply the due diligence requirements under Treas. Reg. Section 1.1471-3 (applicable to withholding agents) to determine the FATCA status of account holders and entity payees and must apply the due diligence requirements of chapter 3 or chapter 61 with respect to individual account holders.

Additional requirements for identifying and documenting account holders and payees

The final agreement generally applies the documentation requirements in the regulations along with certain additional rules.

The final agreement clarifies certain procedural requirements in the draft agreement, including the following:

- A participating FFI making a withholdable payment to an entity payee, that is not the account holder, must reliably associate the payment with documentation that meets the requirements of the FFIA prior to making the payment.
- Generally a participating FFI must apply the presumption rules under the final FFIA to determine the chapter 4 status of an undocumented entity payee.
- The final agreement deletes a provision in the draft agreement that would have permitted a PFFI to choose to escrow amounts withheld (in lieu of depositing such amounts as tax withheld) with respect to an account holder or payee after the date of a change in circumstances until the earlier of the date that is 90 days after the date the first withholdable payment is made to the account following the change in circumstances or the end of the calendar year in which such withholdable payment is made.

As under the draft agreement, if a PFFI is unable to obtain the required documentation within 90 days of the expiration date of the documentation or a change in circumstances, the participating FFI must apply the presumption rules of the agreement with respect to the account or payee until the FFI obtains valid documentation on which it may rely. The presumption rules include a special rule under which, following a change in circumstances, a participating FFI may continue to treat otherwise valid documentation previously provided by an account holder or payee as valid and rely on such documentation until the earlier of 90 days following the change in circumstances or the date new documentation is obtained on which the PFFI may rely.

- EY observes: In the case of a change in circumstance, the text of the final agreement clarifies an ambiguity under the draft agreement, which had a 30 day documentation period following a change in circumstances. The 30 day documentation period was deleted.

- EY observes: The final agreement add a reference to time period provided for chapter 3 purposes for documenting account holders after a change in circumstance occurs. This cross referenced provision in the chapter 3 regulations provides for only a 30 day grace period, but permits a withholding agent to choose to apply a 90 day grace period.
- EY observes: The final agreement appears to provide that expired tax forms are treated in the same manner as a change in circumstance, i.e., withholding is not required on day 1 after a form expires, but must begin on day 91. Whether this is the intended result, effectively making a Form W-8 valid for the year received plus three years and 90 days, will have to be determined after the temporary regulations under both chapters 3 and 4 are released.

Presumption rules in absence of valid documentation

Under a provision that applies either to an entity payee or an account held by an entity, a participating FFI must apply the presumption rules for entities under the regulations in the absence of valid documentation. This rule does not apply to an individual payee or account holder. In the absence of documentation for an individual account holder, the PFFI must treat the account as held by a recalcitrant account holder.

Reporting Model 2 FFIs that apply the due diligence procedures under the FFIA with respect to an account must treat an account that would otherwise be treated as a recalcitrant account as a non-consenting US account to the extent required under the applicable Model 2 IGA. If applying the due diligence procedures under Annex I, the Reporting Model 2 FFI must apply Annex I to treat the account as held by a nonparticipating FFI or non-consenting US account. With respect to a withholdable payment made to an entity payee, a Reporting Model 2 FFI must apply the presumption rules in the FATCA regulations.

- EY observes: The final FFIA clarifies that the presumption rules in the regulations apply when a Reporting Model 2 FFI makes a withholdable payment to undocumented entity payees, and not the due diligence rules of Annex I or Section 3.02 of the final agreement.

FFIA Section 4. Withholding requirements

As under the draft agreement, the final agreement provides the general rule that a participating FFI is required to deduct and withhold a tax equal to 30 percent from any withholdable payment made to an account maintained by the participating FFI that is held by a recalcitrant account holder or a nonparticipating FFI. With respect to obligations that are not accounts, the final FFIA modifies the rule in the draft agreement by limiting the requirement to an "offshore obligation," a term that is defined by reference to the regulations. The provision now provides that a participating FFI is required to deduct and withhold on a withholdable payment made to a payee that is (or is presumed to be) a nonparticipating FFI with respect to an offshore obligation that is not an account.

- EY observes: It is likely that the definition of an "offshore obligation" in the regulations will be changed in the soon to be released temporary chapter 4 regulations. Thus, the practical impact of requiring withholding on nonparticipating FFIs for an offshore obligation that is not an account is not known.

Participating FFI's option to elect backup withholding or FATCA withholding on recalcitrant account holders

An alternative option for a participating FFI (including a US branch of a participating FFI that is *not* treated as a US person) to satisfy its withholding obligations was introduced in the draft agreement, allowing a PFFI to elect to perform either chapter 4 (FATCA) withholding or backup withholding under Section 3406. The draft agreement provided that, if a participating FFI has an account holder who is recalcitrant and is known to be a US person, it may elect to backup withhold at a rate of 28 percent on any withholdable payment, to the extent that the payment also constitutes a reportable payment. The final agreement modifies this option by removing the description of the account holders as "recalcitrant account holders that are known US persons and that receive

withholdable payments, to the extent that the payment also constitutes a reportable payment." The final agreement replaces this text with "recalcitrant account holders that receive a withholdable payment and that are subject to backup withholding under Section 3406."

The final agreement retains the rule in the draft agreement under which a participating FFI is not relieved of its requirement to backup withhold under Section 3406 with respect to reportable payments that are not withholdable payments; and the final agreement provides an example, i.e., payments with respect to grandfathered obligations.

General rules for withholding

As under the draft agreement, the final agreement provides that a participating FFI that makes a withholdable payment must determine whether withholding is required by applying the requirements of the FATCA regulations to determine the payee of the payment and to reliably associate the payment with valid documentation to establish the payee's FATCA status. However, there is a change to the withholding procedure regarding payments made to an account holder of a preexisting account before the expiration of the time period in the agreement for identifying the account or applying the presumption rules. In the draft agreement, a participating FFI was not required to withhold during this period, but the final agreement provides an exception under which withholding is required to begin immediately on payments made to a preexisting account if the account holder becomes a *documented* nonparticipating FFI. This change conforms the final FFIA to the rule in the regulations.

- EY observes: Presumably an account documented as held by a nonparticipating FFI means one that is documented by means of a valid Form W-8BEN-E, written statement, self-certification, etc., although the final agreement does not provide this level of detail.

As under the draft agreement, the final agreement provides that a participating FI that is a nonqualified intermediary ("NQI"), nonwithholding foreign partnership ("NWP"), or nonwithholding foreign trust ("NWT") is not required to withhold on a withholdable payment of US source FDAP income that it receives as an intermediary, provided that it provides its withholding agent with sufficient information for the withholding agent to establish the portion of the payment that is allocable to recalcitrant account holders in each chapter 4 withholding rate pool. However, the final agreement specifically requires an FFI withholding statement to be provided to the withholding agent that contains such information. Similarly, the final FFIA also requires an FFI withholding statement to be provided to the withholding agent by a participating FFI that is a NQI, NWP or NWT electing to perform backup withholding in lieu of FATCA withholding on recalcitrant account holders. As a reminder, when a payment is not subject to withholding under FATCA, but is subject to withholding under chapter 3, the participating FFI must also provide the withholding agent with specific account holder and/or payee information for chapter 3 purposes.

As under the draft agreement, if a participating FFI fails to provide sufficient information to its withholding agent or knows or has reason to know that a withholding agent has under-withheld with respect to its account holders, the participating FFI is responsible for withholding and deducting such tax.

Withholding requirements with respect to limited branches and limited FFIs

As under the draft agreement, a participating FFI is required to withhold on a withholdable payment it makes to, or receives on behalf of, a limited branch or limited FFI to the extent required under the FATCA regulations. The final agreement adds a clarification to the effect that a participating FFI is required to withhold when it has reason to know that a withholdable payment is made to a limited branch of a participating FFI or registered deemed-compliant FFI.

Further, the final agreement clarifies the circumstances in which a participating FFI will have reason to know that a withholdable payment is made to a limited branch of a participating FFI or registered deemed-compliant FFI. Under the final agreement, a participating FFI will have reason know that such a payment is made to a limited branch

when it is directed to make the payment to an address of the FFI in a jurisdiction other than that of the participating FFI or registered deemed-compliant FFI (or branch of the FFI) that is identified as the FFI (or branch of the FFI) that is supposed to receive the payment. The example in the final agreement expands the reason to know example in the draft agreement to include the fact that the participating FFI making the payment receives a direction to make the payment to an address in a different jurisdiction.

FFIA Section 5. Deposit requirements

The deposit rules in the draft agreement closely track the provisions in the final regulations. The final agreement adds a reference to the domestic deposit rules (Treas. Reg. Section 31.6302-4) for PFFIs that elect to apply backup withholding under Section 3406 to recalcitrant account holders. Section 5.02, which pertains to dormant accounts, now includes the time frame for depositing taxes held in escrow, which is the earlier of 90 days or the end of the calendar year following the date that the account ceases to be a dormant account. This section also prohibits a PFFI electing to use the escrow procedure from delegating the escrow responsibility to the withholding agent from whom it received the payment.

FFIA Section 6. Information reporting and tax return obligations

This section of the FFIA provides the reporting requirements of a participating FFI and a Reporting Model 2 FFI following the final regulations and Model 2 IGA. A participating FFI is required to report annually certain specific payee information with respect to US accounts that it maintains and also certain aggregate account information with respect to its recalcitrant account holders classified in accordance with the pools described in the FATCA regulations. Also, a participating FFI that is a Reporting Model 2 FFI must report its non-consenting US accounts classified in accordance with the pools described in the FATCA regulations. The pools in the FATCA regulations relate to:

- Accounts held by passive nonfinancial foreign financial entities ("NFFEs") that are recalcitrant account holders,
- Accounts held by US persons that are recalcitrant account holders,
- Accounts held by certain recalcitrant account holders, other than passive NFFEs, US persons or dormant accounts, that have US indicia,
- Accounts held by recalcitrant account holders, other than passive NFFEs or dormant accounts, that do not have US indicia, and
- Accounts held by recalcitrant account holders that are dormant accounts.

Also, a participating FFI has a transitional reporting obligation for payments of foreign reportable amounts made to account holders that are nonparticipating FFIs.

Additionally, a participating FFI may be required to report certain aggregate information with respect to chapter 4 reportable amounts paid to its recalcitrant account holders, payees that are nonparticipating FFIs and payees that are US persons.

US account reporting

Accounts for which reporting is required

On a calendar year basis, a participating FFI (other than its US branch treated as a US person) must report each US account that it maintains. A participating FFI (other than it US branch treated as a US person) may report its US accounts on Form 8966. Alternatively, as allowed under the regulations, a participating FFI may elect to perform chapter 61 reporting as modified under the FFI agreement. Modified chapter 61 reporting is required on the appropriate Form 1099 with respect to each holder of a US account that is a specified US person. With respect to an account held by an entity treated as a passive NFFE with substantial US owners, or held by an owner-documented FFI with specified US persons identified in the regulations, the participating FI must report on Form 8966. A participating FFI that performs modified chapter 61 reporting for an account must report the account on Form 1099-MISC, *Miscellaneous Income*, for the calendar year regardless of whether the participating FFI makes a reportable payment to the account during the calendar year.

As under the draft agreement, the final agreement also requires a participating FFI that is a trustee of a trustee documented trust (as defined in the applicable Model 1 or Model 2 IGA) to report each US account maintained by the trust as if the participating FFI maintained the account. Reporting with respect to a US account is generally the same under the final agreement as it was under the draft agreement, with the differences noted below.

Reporting with respect to recalcitrant account holders

- A participating FFI is required to report on Form 8966 (filed on magnetic media, i.e., the FATCA Report XML) certain aggregate information regarding accounts held by recalcitrant account holders regardless of whether a withholdable payment was made to such accounts during the calendar year.
- A Reporting Model 2 FFI is required to report on Form 8966 certain aggregate information regarding accounts treated as non-consenting US accounts classified in accordance with the pools identified in the regulations (described above) whether or not a withholdable payment was made to such accounts during the calendar year.
- On this reporting, the final agreement adds details but is consistent with the draft agreement.

Special transitional reporting of payments to nonparticipating FFIs

- As under the draft agreement, the final agreement requires a participating FFI to report, for calendar years 2015 and 2016, on a specific payee basis on Form 8966 the aggregate amount of foreign reportable amounts paid with respect to an account held by a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI) that the participating FFI maintains. Also, as under the draft agreement, the final agreement provides for an alternative method by which a PFFI (including a Model 2 FFI) that is prohibited from reporting on a specific payee basis under domestic law, absent the consent of the account holder, may report on Form 8966 the aggregate number of accounts held by any non-consenting NPFFIs, as well as the aggregate amount of foreign reportable amounts paid to such non-consenting NPFFIs for calendar years 2015 and 2016. In either case, the PFFI may report all income, gross proceeds and redemptions (regardless of source) paid to the NPFFIs accounts (or all non-consenting NPFFIs' accounts, as applicable) by the participating FFI during the calendar year instead of reporting only foreign reportable amounts. The Form 8966 must be filed on magnetic media, i.e., the FATCA Report XML.
- Aside from a few additional details, this transitional reporting is the same between the draft agreement and the final agreement.

Reporting of withholdable payments and tax withheld

- General rule: Generally a participating FFI must report on Form 1042-S with respect to chapter 4 reportable amounts paid to recalcitrant account holders, NPFFIs, and, with respect to a non-US payor, US persons that are included in a US payee chapter 4 reporting pool. Most of the reporting rules are the same in the final agreement as compared to the draft agreement. However, there is a clarification, which is that the participating FFI reporting of US persons in a chapter 4 reporting pool is limited to a PFFI that is a non-US payor. Lastly, there is also a change in pooled reporting as described below.
- A participating FFI may report chapter 4 reportable amounts made to a specific recipient or to a chapter 4 reporting pool to the extent permitted or required under the final agreement. The FFIA also refers to the regulations for additional reporting requirements for chapter 4 reportable amounts.
- Pooled reporting: The final agreement includes a requirement that a participating FFI that is a non-US payor must report payees of US accounts that it reports under Section 6.02 (US Account Reporting as described above) in a chapter 4 reporting pool of US payees. The limitation that this requirement is restricted to a participating FFI that is a non-US payor was not present in the draft agreement.

- The final agreement removed the pooled reporting for a Reporting Model 2 FFI provision in the draft agreement (formerly Section 6.05(A)(1)(ii)). The deleted provision, generally addressed the chapter 4 reporting pool of payees that are US persons and included account holders of non-consenting US accounts that are not subject to chapter 4 withholding under the applicable Model 2 IGA.
- Reporting required when electing to withhold under Section 3406 on Recalcitrant Account Holders: A participating FFI that elects to satisfy its obligation to withhold on withholdable payments with respect to recalcitrant account holders by backup withholding under Section 3406 on those payments as described in the final agreement, must report on the applicable Form 1099 the reportable payments made during the year to such persons. The form must be filed by the legal entity covered by the final agreement and must exclude payments made by its US branch, if any. A US branch of a participating FFI that has not agreed to be treated as a US person and that makes the election to withhold under Section 3406 on recalcitrant account holders must file separate Forms 1099 using the EIN assigned to that US branch.
- A US branch of a participating FFI (regardless of whether it is treated as a US person) must report separately on Forms 1042-S or 1099 with respect to amounts paid or received by the US branch during the year on behalf of its account holders. However, a US branch of a participating FFI that is not treated as a US person is only required to report on Form 1042-S or Form 1099 to the extent the participating FFI knows or has reason to know that the payment or the a amount of tax withheld is not correctly reported, or that less than the required amount has been withheld on the payment by its withholding agent.
- US Source FDAP Income Subject to Reporting under Chapter 3: A participating FFI making a withholdable payment of US source FDAP income and reporting it on Form 1042-S under the general chapter 4 reporting rule in the final agreement is not required to file a separate Form 1042-S for the same payment for chapter 3 reporting purposes. However, a participating FFI that is reporting US source FDAP income that is reportable under chapter 3 and is a chapter 4 reportable amount that is not subject to withholding under the final agreement will be required to include on the Form 1042-S a code identifying the payment as exempt for Chapter 4 purposes.
- Reporting of Withholdable Payments to Limited Branches and Limited FFIs: A PFFI must report (or provide sufficient information to its withholding agent to report) withholdable payments that it receives on behalf of a limited branch or limited FFI.
- A participating FFI is not required to report on Form 1042-S or Form 1099 under the general US account reporting rules amounts that the participating FFI receives on behalf of a recalcitrant account holder, nonparticipating FFI, or chapter 4 reporting pool of payees that are US persons to the extent that its withholding agent has correctly reported on a Form 1042-S or Form 1099 (as the context requires) and withheld the correct amount of tax on such amounts.

Coordination with Chapter 61 reporting

As under the draft agreement, a non-US payor that is a participating FFI will satisfy its reporting obligations under chapter 61 (Form 1099 reporting) with respect to a payee that is a non-exempt recipient (or presumed US non-exempt recipient) if the participating FFI reports such an account holder under the final agreement. Nevertheless, a participating FFI is required to report on Form 1099 to the extent the participating FFI applies backup withholding under Section 3406 to the payment.

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