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## **Reg. 1.6049-5(c)(5)**

Interest and original issue discount subject to reporting after December 31, 1982

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### (c) Applicable rules.

#### (1) Documentary evidence for offshore obligations and certain other obligations.

(i) A payor may rely on documentary evidence described in §1.1471-3(c)(5)(i) instead of a beneficial owner withholding certificate described in §1.1441-1(e)(2)(i) in the case of an amount paid outside the United States (as described in paragraph (e) of this section) with respect to an offshore obligation, or, in the case of broker proceeds described in §1.6045-1(c)(2), to the extent provided in §1.6045-1(g)(1)(i). For purposes of this section, the term offshore obligation means--

(A) An account maintained at an office or branch of a bank or other financial institution located outside the United States; or

(B) An obligation as defined in §1.6049-4(f)(3) (other than an account described in paragraph (c)(1)(i)(A) of this section), contract, or other instrument with respect to which the payor is either engaged in business as a broker or dealer in securities or a financial institution (as defined in §1.1471-5(e)) that engages in significant activities at an office or branch located outside the United States. For purposes of the preceding sentence, an office or branch of such payor shall be considered to engage in significant activities with respect to an obligation when it participates materially and actively in negotiating the obligation under the principles described in §1.864-4(c)(5)(iii) (substituting the term "obligation" for the term "stock or security").

(ii) A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person; and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed for purposes of this paragraph (c)(1) by retaining an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the documents reviewed for as long as it may be relevant to the determination of the payor's obligation to report under §1.6049-4 and this section and noting in its records the date on which the document was received and reviewed. Documentary evidence furnished for a payment of an amount subject to withholding under chapter 3 of the Code or that is a chapter 4 reportable amount under §1.1474-1(d)(2) must contain all of the information that is necessary to

complete a Form 1042-S for that payment. See §§ 1.1471-3(c) and 1.1471-4(c) for additional documentation requirements to identify a payee or account holder for chapter 4 purposes that may apply in addition to the requirements under paragraph (c) of this section.

(iii) Even if an account or obligation (as defined in §1.6049-4(f)(3)) is not maintained outside the United States (maintained in the United States), a payor may rely on documentary evidence associated with a withholding certificate described in §1.1441-1(e)(3)(iii) with respect to the persons for whom an entity acting as an intermediary collects the payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in §1.1441-1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in §1.1441-1(c)(24), or foreign owners of a foreign grantor trust, as defined in §1.1441-1(c)(26), even though the partnership or trust account is an obligation maintained in the United States.

(iv) For accounts opened on or after July 1, 2014, and before January 1, 2015, and for obligations entered into on or after July 1, 2014, and before January 1, 2015, a payor may continue to apply the rules of §1.6049-5(c)(1) and (c)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2013, rather than this paragraph (c)(1) and paragraph (c)(4) of this section. A payor that applies the rules of §1.6049-5(c)(1) and (c)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2013, to an account or obligation must also apply §1.1441-6(c)(2) (to the extent applicable) and §1.6049-5(e) both as in effect and contained in 26 CFR part 1 revised April, 2013, with respect to the account or obligation.

(2)Other applicable rules. The provisions of §1.1441-1(e)(4)(i) through (xii) (regarding who may sign a certificate, validity period of certificates and documentary evidence, retention of certificates, reliance rules, etc.) shall apply (by substituting the term "payor" for the term "withholding agent" and disregarding the fact that the provisions under §1.1441-1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See §1.1441-1(b)(2)(vii) for provisions dealing with reliable association of a payment with documentation.

(3)Standards of knowledge. A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of §1.1441-7(b)(2) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W-9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in §31.3406(h)-3(e) of this chapter (see the information and certification described in §31.3406(h)-3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W-9). The provisions of § 1.1441-7(b)(2) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which §1.1441-7(b)(2) is otherwise limited. The exemptions from reporting described in

paragraphs (b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) Special documentation rules for certain payments. This paragraph (c)(4) modifies the provisions of paragraph (c)(1) of this section for payments of amounts that are not subject to withholding under chapter 3 of the Code, other than amounts described in paragraph (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. source deposit interest described in section 871(i)(2)(A) or 881(d)(3)). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under §1.1441-2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). A payor may rely upon documentation in lieu of documentary evidence (as described in paragraph (c)(1) of this section) or a written statement (as defined in §1.1471-1(b)(150)) or another statement to the extent permitted in paragraphs (c)(4)(i) through (iii) of this section, until the payor knows or has reason to know of a change in circumstance that makes the documentation unreliable or incorrect (as defined in §1.1441-1(e)) when the payor does not have customer information for the payee that includes any of the U.S. indicia described in §1.1471-3(c)(6)(ii)(C)(1). Further, a payor may maintain such documentation or documentary evidence as required in paragraph (c)(4)(iv) of this section.

(i) Statement in lieu of documentary evidence with respect to accounts. If under the local laws, regulations, or practices of a country in which an account is maintained, it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section with respect to the type of account, the payor may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on the statement described in this paragraph (c)(4)(i) (or such substitute statement as the Internal Revenue Service may prescribe) made on an account opening form. However, see, also §1.1471-4(c) or an applicable IGA for additional documentation requirements that may apply to a participating FFI (including a reporting Model 2 FFI) for determining the status of its account holders for chapter 4 purposes. The statement referred to in this paragraph (c)(4)(i) must appear near the signature line and must state, "By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. Federal income tax and that he/she/it is not acting for, or on behalf of, a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days." Additionally, a payor may, instead of obtaining a beneficial owner withholding certificate described in §1.1441-1(e)(2)(i) or §1.1471-3(c)(3)(ii) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on a written statement described in paragraph §1.1471-1(b)(150) to the extent a payor uses such written statement to establish a payee's chapter 4 status and is permitted to use the written statement under §1.1471-3(d) (by substituting the term "payor" for the term "withholding agent") without any other documentary evidence.

(ii) Documentation under IGA. A payor that is a reporting Model 1 FFI or reporting Model 2 FFI may rely upon documentation or information establishing a

payee's status that is permitted under an applicable IGA for determining whether the account of the payee is other than a U.S. account and regardless of whether such documentation or certification is described in paragraph (c)(1) of this section or §1.1441-1(e)(2).

(iii) Maintenance of documentation and written statement. A payor maintains documentation if it either maintains the documentary evidence as described in paragraph (c)(1) of this section or retains a record of the documentary evidence reviewed if the payor is not required to retain copies of the documentation pursuant to the payor's AML due diligence (as defined in §1.1471-1(b)(4)). A payor retains a record of documentary evidence reviewed by noting in its records the type of documentation reviewed, the date the document was reviewed, the document's identification number (if any), and whether such documentation contained any U.S. indicia described in §1.1441-7(b)(8). Any statement described in paragraph (c)(4)(i) of this section, must be retained in accordance with §1.1471-3(c)(6)(iii).



(5) U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman.

(i) Definition. The terms payor and middleman have the meanings ascribed to them under §1.6049-4(a). A non-U.S. payor or non-U.S. middleman means a payor or middleman other than a U.S. payor or U.S. middleman. The term U.S. payor or U.S. middleman means-

(A) A person described in section 7701(a)(30) (including a foreign branch or office of such person);

(B) The government of the United States or the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(C) A controlled foreign corporation within the meaning of section 957, determined without applying section 318(a)(3)(A), (B), and (C) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

(D) A foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons (as defined in §1.1441-1(c)(2)) who, in the aggregate hold more than 50 percent of the income or capital interest in the partnership or if, at any time during its tax year, it is engaged in the conduct of a trade or business in the United States;

(E) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States; or

(F) A U.S. branch or territory financial institution described in §1.1441-1(b)(2)(iv) that is treated as a U.S. person.

(ii) Reporting by U.S. payors in U.S. possessions. U.S. payors are not required to report on Form 1099 income that is from sources within a possession of the United States and that is exempt from taxation under section 931, 932, or 933, each of which sections exempts certain income from sources within a possession of the United States paid to a bona fide resident of that possession. For purposes of this paragraph (c)(5)(ii), a U.S. payor may treat the beneficial owner as a bona fide resident of the possession of the United States from which the income is sourced if, prior to payment of the income, the U.S. payor can reliably associate the payment with valid documentation that supports the claim of residence in the possession of the United States from which the income is sourced. This paragraph (c)(5)(ii) shall not apply if the U.S. payor has actual knowledge or reason to know that the documentation is unreliable or incorrect or that the income does not satisfy the requirements for exemption under section 931, 932, or 933. For the rules determining whether income is from sources within a possession of the United States, see section 937(b) and the regulations thereunder.

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