

Please include “Notice 2018–28” on the cover page.

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Internal Revenue Service  
Courier’s Desk  
1111 Constitution Ave., N.W.  
Washington, DC 20224  
Attn: CC:PA:LPD:PR  
(Notice 2018–28)

Submissions may also be sent electronically to the following e-mail address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include “Notice 2018–28” in the subject line.

## SECTION 10. DRAFTING AND GENERAL CONTACT INFORMATION

The principal authors of this notice are Zachary King and Charles Gorham of the Office of the Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Mr. King or Mr. Gorham at (202) 317-7003 (not a toll-free number).

---

# Guidance Regarding the Implementation of New Section 1446(f) for Partnership Interests That Are Not Publicly Traded

## Notice 2018–29

### SECTION 1. OVERVIEW

This notice announces that the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) intend to issue regulations under new section 1446(f) of the Internal Revenue Code (“Code”) regarding the disposition of a partnership interest that is not publicly traded. This notice also provides interim guidance that taxpayers may rely on pending the issuance of regulations. New section 1446(f) was added by section 13501 of “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” P.L. 115–97 (the

“Act”), which was enacted on December 22, 2017. Section 13501 of the Act also added new section 864(c)(8).

### SECTION 2. BACKGROUND AND SUMMARY OF COMMENTS

In general, section 864(c)(8) provides that gain or loss from the sale, exchange, or other disposition of a partnership interest by a nonresident alien or foreign corporation is effectively connected with the conduct of a trade or business in the United States to the extent that the person would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value. Section 864(c)(8) applies to sales, exchanges, or other dispositions occurring on or after November 27, 2017. *See* Rev. Rul. 91–32, 1991–1 C.B. 107, for the IRS’s position with respect to sales, exchanges, or other dispositions of an interest in a partnership by a nonresident alien individual or foreign corporation occurring before November 27, 2017.

In general, section 1446(f)(1) provides that if any portion of the gain on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States, then the transferee must deduct and withhold a tax equal to 10 percent of the amount realized on the disposition. Under an exception in section 1446(f)(2), however, withholding is generally not required if the transferor furnishes an affidavit to the transferee stating, among other things, that the transferor is not a foreign person.

Section 1446(f)(4) provides that if a transferee fails to withhold any amount required to be withheld under section 1446(f)(1), the partnership shall be required to deduct and withhold from distributions to the transferee a tax in an amount equal to the amount the transferee failed to withhold (plus interest under the Code on such amount).

Section 1446(f)(6) authorizes the Secretary to prescribe such regulations or other guidance as may be necessary to carry out the purposes of section 1446(f), including regulations providing for exceptions from the provisions of section 1446(f). Furthermore, section 1446(g) authorizes the Secretary to prescribe such regulations as may be necessary to carry

out the purposes of section 1446 generally. Section 1446(f) applies to sales, exchanges, or other dispositions occurring after December 31, 2017.

On December 29, 2017, the Treasury Department and IRS advance released Notice 2018–08, 2018–7 I.R.B. 352 (“PTP Notice”). The PTP Notice suspended the requirement to withhold on dispositions of certain interests in publicly traded partnerships (“PTPs”) in response to stakeholder concerns that applying section 1446(f) to PTPs without guidance presented significant practical problems. The PTP Notice also requested comments on the implementation of section 1446(f), including whether a temporary suspension of section 1446(f) for partnership interests that are not publicly traded (“non-PTP interests”) was needed. Several comments were received.

Comments in response to the PTP Notice requested guidance minimizing the application of section 1446(f) until further guidance was issued, including suspension of section 1446(f) for non-PTP interests. This notice does not suspend the application of section 1446(f) for non-PTP interests in all cases, but does include guidance under section 1446(f) designed to allow for an effective and orderly implementation, including minimizing occasions of overwithholding. The rules in this notice (including section 6) that modify or suspend withholding under section 1446(f) do not affect the transferor’s tax liability under section 864(c)(8). *See* section 4.06 of this notice.

Comments stated that applying section 1446(f) to dispositions of non-PTP interests presents significant practical problems. Comments stated that a transferee is obligated to withhold with respect to dispositions occurring after December 31, 2017, but without forms, instructions or other guidance, it is unclear when or how to deposit the withheld amounts. To address this concern, section 5 of this notice provides interim guidance on reporting and paying over the amount required to be withheld under section 1446(f)(1). This guidance generally adopts the forms and procedures relating to withholding on dispositions of U.S. real property interests under section 1445 and the regulations thereunder.

Comments requested guidance on the procedures for the transferor to furnish an affidavit of non-foreign status to the transferee as described in section 1446(f)(2) to be relieved from withholding. Section 6.01 of this notice provides this guidance by generally adopting the rules in the section 1445 regulations for similar situations.

Section 1446(f) applies only when there is gain on a disposition of an interest in a partnership. To prevent withholding when no gain occurs on a disposition, section 6.02 of this notice provides that if a transferee receives a certification from a transferor that the disposition will not result in gain, then the transferee generally is not required to withhold under section 1446(f).

Comments requested relief from withholding obligations when the amount of effectively connected gain under section 864(c)(8) is zero or a small amount. One comment recommended a rule providing relief based on the value of the assets producing effectively connected income, modeled on § 1.1445-11T. Section 1.1445-11T provides an exception from the requirement that a transferee withhold on the transfer of an interest in a partnership that holds U.S. real property interests. The transferee is relieved from withholding under this exception if the partnership provides the transferee a statement certifying that fifty percent or more of the value of the gross assets does not consist of U.S. real property interests, or that ninety percent or more of the value of the gross assets of the partnership does not consist of U.S. real property interests plus cash or cash equivalents. Instead of adopting a rule based on the test in § 1.1445-11T, sections 6.03 and 6.04 of this notice provide two rules that relieve the transferee from withholding in circumstances similar to those described by the comments.

Section 6.03 of this notice provides generally that, if a transferor certifies to a transferee that for each of the past three years the transferor's effectively connected taxable income from the partnership was less than 25 percent of the transferor's total income from the partnership, the transferee is not required to withhold. This rule is designed to provide a simple approach, obviating the need for the part-

nership to make the computation required by section 864(c)(8) or to otherwise provide information to the transferor or transferee at the time of the transaction. However, in certain cases transferees may not be able to obtain this certification, so section 6.04 of this notice provides a separate rule relieving a transferee of its withholding obligation under section 1446(f)(1) when the transferee receives a certification from the partnership that the partnership's effectively connected gain under section 864(c)(8) would be less than 25 percent of the total gain on the deemed sale of all its assets. The Treasury Department and the IRS intend to provide future guidance that will reduce the threshold for withholding below 25 percent for both of these rules. Other limitations are also under consideration. The Treasury Department and the IRS expect that any such reduction in the threshold for withholding would be effective at the same time as guidance providing for withholding certificates or otherwise providing for withholding determined by reference to gain recognized under section 1446(f)(3).

A comment recommended guidance providing that no gain or loss be recognized under section 864(c)(8) in certain dispositions that would otherwise be considered nonrecognition transactions, provided that gain or loss is preserved. Specifically, the comment suggested alternative rules, one considering whether the gain or loss is preserved in the U.S. tax base, and the other considering whether the gain or loss is preserved in the hands of the transferee. The Treasury Department and the IRS are studying the appropriate treatment of nonrecognition transactions under section 864(c)(8), and comments are requested on this issue, including the relationship between nonrecognition transactions under sections 864(c)(8) and 897. See § 1.897-6T. Until this guidance is provided, section 6.05 of this notice provides that no withholding is required under section 1446(f) in a transaction in which no gain is recognized.

Section 1446(f)(1) applies to the amount realized on the disposition of a partnership interest. The amount realized includes a reduction in the transferor's share of partnership liabilities and other liabilities to which the partnership interest is subject.

See §§ 1.752-1(h) and 1.1001-2. Section 7 of this notice provides two rules for determining the amount of partnership liabilities that are included in the amount realized. Section 7.02 of this notice provides that a transferee may generally rely on a transferor's most recently issued Schedule K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*, for purposes of determining the transferor's share of partnership liabilities included in the amount realized for purposes of section 1446(f). Alternatively, section 7.03 provides that a transferee may generally rely on a certification from the partnership providing the amount of the transferor's share of partnership liabilities.

Comments stated that when the amount realized includes a reduction in liabilities, the amount the transferee may be required to withhold could exceed the cash or other property the transferee pays to the transferor. Further, in some situations, a transferor may not provide any information to the transferee about its share of partnership liabilities, making a determination of the total amount realized difficult. To address these issues, section 8 of this notice provides that in certain cases, the total amount of withholding is generally limited to the total amount of cash and property to be transferred. The Treasury Department and the IRS expect that the exception in section 8 will not apply after guidance is issued providing for withholding certificates or otherwise providing for withholding determined by reference to gain recognized under section 1446(f)(3).

The comments also raised an issue relating to the determination of a transferor's basis in its partnership interest. Section 731(a) provides that in the case of a distribution by a partnership to a partner, gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution. Any gain recognized under section 731(a) is considered gain from the sale or exchange of the partnership interest of the distributee partner. Thus, section 1446(f) applies in certain cases when a distribution of money (including marketable securities) results in gain under section 731. According to a comment, when a partnership distributes money, it may not know the

distributee partner's basis in its interest and, thus, may not know whether the distribution will cause the distributee partner to recognize gain. In response to this comment, section 9 of this notice provides that the partnership may generally rely on its books and records, or on a certification received from the distributee partner, to determine whether the distribution exceeds the partner's basis.

Section 10 of this notice responds to requests for guidance on the interaction of section 1445 with section 1446(f).

The Treasury Department and the IRS are considering rules that would relieve a partnership of its obligation under section 1446(f)(4) if it provides the information required by a transferor and transferee to comply with the requirements under sections 864(c)(8) and 1446(f), including the certification described in section 6.04 of this notice, information on the calculation of the tax liability under section 864(c)(8) to the transferor, and information necessary to calculate the amount realized (including calculations relating to section 752) by the transferor. Section 11 of this notice provides that the withholding requirements described in section 1446(f)(4) will not apply until regulations or other guidance have been issued under that section.

### SECTION 3. DEFINITIONS

.01 *Effectively connected gain.* The term "effectively connected gain" means the amount of net gain (if any) that would have been effectively connected with the conduct of a trade or business within the United States if the partnership had sold all of its assets at their fair market value as of the date of the transfer described in section 864(c)(8)(A).

.02 *Transfer.* The term "transfer" means any sale, exchange or other disposition.

.03 *Transferor.* The term "transferor" means any person that transfers a partnership interest, and includes a person that receives a distribution from a partnership.

.04 *Transferee.* The term "transferee" means any person that acquires a partnership interest by transfer, and includes a partnership that makes a distribution.

.05 *Related person.* The term "related person" is a person that is related within the meaning of section 267(b) or section 707(b)(1).

### SECTION 4. RULES OF GENERAL APPLICABILITY

.01 *U.S. taxpayer identification numbers ("U.S. TINs").* A certificate described in sections 6.02, 6.03, and 7.02 of this notice must include the transferor's U.S. TIN to the extent that the transferor is required to have, or does have, a U.S. TIN. A transferee may rely on an otherwise valid certificate that does not include a U.S. TIN for the transferor unless the transferee knows that the transferor is required to have a U.S. TIN or that the transferor does in fact have a U.S. TIN. An affidavit of non-foreign status or Form W-9, *Request for Taxpayer Identification Number and Certification*, provided for purposes of section 6.01 of this notice must include a U.S. TIN in all cases.

.02 *Penalties of perjury.* For purposes of this notice, a certification signed under "penalties of perjury" must provide the following: "Under penalties of perjury I declare that I have examined the information on this document, and to the best of my knowledge and belief, it is true, correct, and complete." Such a certification by an entity must further provide the following: "I further declare that I have authority to sign this document on behalf of [name of entity]."

.03 *Authority to sign certifications.* For purposes of this notice, a certification described in section 6, 7, or 9 of this notice from an entity must be signed by an individual who is an officer, director, general partner, or managing member of the entity, or, if the general partner or managing member of the entity is itself an entity, an individual who is an officer, director, general partner, or managing member of the entity that is the general partner or managing member.

.04 *Retention period.* A transferee that obtains and relies upon an affidavit or certification provided for in this notice must retain that document with its books and records for a period of five calendar years following the close of the last calendar year in which the entity relied upon the certification or as long as it may be relevant to the determination of the transferee's withholding obligation under section 1446(f), whichever period is longer.

.05 *Publicly traded partnerships.* The rules in this notice do not apply to the

transfer of a publicly traded interest in a publicly traded partnership (within the meaning of section 7704(b)).

.06 *Applicability of Section 864(c)(8).* The rules in this notice that modify or suspend withholding under section 1446(f) do not affect the transferor's tax liability under section 864(c)(8).

### SECTION 5. USE OF SECTION 1445 PRINCIPLES FOR REPORTING AND PAYING OVER SECTION 1446(f) WITHHOLDING FOR DISPOSITIONS OF NON-PUBLICLY TRADED PARTNERSHIP INTERESTS

The Treasury Department and the IRS have determined that, until regulations, other guidance, or forms and instructions have been issued under section 1446(f), transferees required to withhold under section 1446(f)(1) must use the rules in section 1445 and the regulations thereunder for purposes of reporting and paying over the tax, except as otherwise provided in this notice. *See, e.g.,* § 1.1445-1(c). The forms specified in those rules include Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*, and Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*. The transferee must include the statement "Section 1446(f)(1) withholding" at the top of both the relevant Form 8288 and the relevant Form 8288-A. Except as provided in section 8 of this notice, the transferee must also enter the amount subject to withholding under section 1446(f)(1) on line 5b of Part I of the Form 8288 and on line 3 of Form 8288-A and enter the amount withheld on line 6 of Part I of Form 8288 and on line 2 of Form 8288-A. At this time, the IRS will not issue withholding certificates under section 1446(f)(3), such as those provided on Form 8288-B, *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*.

The rules for reporting and paying over amounts withheld and the rules regarding the contents of Form 8288 and Form 8288-A contained in § 1.1445-1(c) and (d) (such as the requirement to report and pay over withholding within 20 days of a transfer) apply to the submission of sec-

tion 1446(f)(1) withholding. A transferee that is required to pay over a withholding tax under section 1446(f) is made liable for that tax under section 1461 (including any applicable penalties and interest). A person that is required, but fails, to pay over the withholding tax required by section 1446(f) may also be subject to civil and criminal penalties. Officers or other responsible persons of either an entity that is required to pay over the withholding tax or any other withholding agent may be subject to a civil penalty under section 6672. The Treasury Department and the IRS intend to issue regulations providing that with respect to any forms that were required to be filed, or amounts that were due, under section 1446(f) on or before May 31, 2018, no penalties or interest will be asserted if these forms are filed with, and such amounts are paid over to, the IRS on or before May 31, 2018.

## **SECTION 6. EXCEPTIONS TO SECTION 1446(f) WITHHOLDING ON DISPOSITIONS OF NON-PUBLICLY TRADED PARTNERSHIP INTERESTS**

### *.01 Certifying Non-Foreign Status*

Section 1446(f)(2) provides that no person shall be required to deduct and withhold any amount under section 1446(f)(1) with respect to any disposition of an interest in a partnership if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's U.S. TIN and that the transferor is not a foreign person. Thus, unless the transferee receives the required affidavit, it must presume that the transferor is foreign for purposes of withholding under section 1446(f)(1).

The Treasury Department and the IRS intend to issue regulations applying rules substantially similar to § 1.1445-2(b), except § 1.1445-2(b)(2)(ii), for making a certification of non-foreign status for purposes of applying section 1446(f)(2). Section 1.1445-2(b) provides rules pursuant to which a transferor of a U.S. real property interest can provide a certification of non-foreign status to inform the transferee that withholding is not required. Until regulations on certifications of non-foreign status under section 1446(f) are issued, a transferor may furnish the certification de-

scribed in § 1.1445-2(b), as modified to take into account section 1446(f) to satisfy the requirements of section 1446(f)(2). Further, a transferor may submit a Form W-9 for this purpose if: (i) it includes the name and U.S. TIN of the transferor; (ii) it is signed and dated by the transferor; and (iii) the jurat has not been deleted. A transferee may generally rely on a Form W-9 that it has previously received from the transferor if it meets these requirements. Until further notice, the certification of non-foreign status or Form W-9 the transferor provides to the transferee should not be furnished to the IRS. See section 1446(f)(2)(B)(ii). If the transferee has actual knowledge that the certification or Form W-9 is false, or the transferee receives a notice (as described in section 1445(d)) from a transferor's agent or transferee's agent that it is false, it may not be relied upon. See section 1446(f)(2)(B)(i).

### *.02 Transferee Receives a Certification of No Realized Gain*

The Treasury Department and the IRS intend to issue regulations providing that, if the transferee receives a certification, issued by the transferor (signed under penalties of perjury and including a U.S. TIN, to the extent required under section 4.01 of this notice), stating that the transfer of its partnership interest will not result in realized gain, a transferee may generally rely on the certification and be relieved from liability for withholding under section 1446(f). The transferee may not rely on the certification and is not relieved from withholding if it has knowledge that the certification is false under the principles of § 1.1445-2(b)(4). Pending the issuance of other guidance, the transferor should not submit to the IRS Form 8288-B for this purpose. If gain is realized in a transfer but not recognized as a result of a nonrecognition provision, the transferee cannot apply this section 6.02. In this circumstance, see section 6.05 of this notice.

### *.03 Transferee Receives a Certification that Transferor Had Less than 25 Percent Effectively Connected Taxable Income in Three Prior Taxable Years*

The Treasury Department and the IRS intend to issue regulations providing that

no withholding is required under section 1446(f)(1) upon the transfer of a partnership interest if no earlier than 30 days before the transfer the transferee receives from the transferor a certification (signed under penalties of perjury and including a U.S. TIN, to the extent required under section 4.01 of this notice) that for the transferor's immediately prior taxable year and the two taxable years that precede it the transferor was a partner in the partnership for the entirety of each of those years, and that the transferor's allocable share of effectively connected taxable income (ECTI) (as determined under § 1.1446-2) for each of those taxable years was less than 25 percent of the transferor's total distributive share of income for that year. For this purpose, the transferor's immediately prior taxable year is the most recent taxable year of the transferor that includes the partnership taxable year that ends with or within the transferor's taxable year and for which both a Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, and a Schedule K-1 (Form 1065) were due (including extensions) or filed (if earlier) by the time of the transfer. In no event may a transferee rely on a certification provided prior to the transferor's receipt of the relevant Forms 8805 and Schedules K-1 (Form 1065). For purposes of this rule, a transferor that had a distributive share of deductions and expenses attributable to the partnership's U.S. trade or business but no ECTI allocated to it in a year must treat its allocable share of ECTI for that year as zero. A transferor that did not have a distributive share of income in any of its three immediately prior taxable years during which the partnership had effectively connected income cannot provide this certification. A transferee may not rely on the certification and is not relieved from withholding if it has actual knowledge that the certification is false. When a partnership is a transferee by reason of making a distribution, this section 6.03 does not apply.

### *.04 Transferee Receives a Certification from Partnership of Less than 25 Percent Effectively Connected Gain Under Section 864(c)(8)*

The Treasury Department and the IRS intend to issue regulations providing that

no withholding is required under section 1446(f)(1) upon the transfer of a partnership interest if the transferee is provided a certification, issued by the partnership and signed under penalties of perjury no earlier than 30 days before the transfer, certifying that if the partnership had sold all of its assets at their fair market value, the amount of gain that would have been effectively connected with the conduct of a trade or business within the United States would be less than 25 percent of the total gain. For purposes of this section 6.04, effectively connected gain includes gain treated as effectively connected with a trade or business in the United States under section 897. Principles similar to the rules of § 1.1445-11T(d)(2)(ii) and (iii) apply to certifications furnished pursuant to this section 6.04. When a partnership is a transferee by reason of making a distribution, the transferee partnership must retain a record of the documentation relied upon to determine the amount of gain (if any), and the portion of the gain that would have been effectively connected with the conduct of a trade or business in the United States (if any). This documentation must be retained for the period described in section 4.04 of this notice.

#### *.05 Nonrecognition Transactions*

The Treasury Department and the IRS intend to issue regulations providing that no withholding is required under section 1446(f)(1) upon the transfer of a partnership interest if the transferee receives from the transferor a notice that satisfies the requirements of § 1.1445-2(d)(2), treating references to section 1445(a) as references to section 1446(f), and references to “U.S. real property interest” as “partnership interest”, except as provided in this section 6.05. A transferee should not mail a copy of the transferor’s notice to the IRS as described in § 1.1445-2(d)(2)(i)(B). The Treasury Department and the IRS are studying the appropriate treatment of nonrecognition transactions under section 864(c)(8). Until guidance providing for the treatment of nonrecognition transactions under section 864(c)(8) is issued, a transfer in which the transferor is not required to recognize any gain or loss by reason of a nonrecognition provision of the Code (without regard to section 864(c)(8)) will be eligible for the exception from with-

holding provided in this section 6.05. When a partnership is a transferee by reason of making a distribution in which no gain is recognized, the transferee partnership is not required to withhold and the transferor is not required to provide a notice to the transferee partnership.

#### *.06 Rules for Agents*

Section 1446(f)(2)(C) provides that the rules of section 1445(d) shall apply to a transferor’s agent or transferee’s agent with respect to any affidavit of nonforeign status in the same manner as such rules apply with respect to the disposition of a United States real property interest under such section. The Treasury Department and the IRS intend to issue regulations providing that the principles of § 1.1445-4 apply for agents to fulfill their responsibilities with respect to any certification provided for purposes of section 1446(f).

### **SECTION 7. DETERMINING THE AMOUNT OF PARTNERSHIP LIABILITIES INCLUDED IN AMOUNT REALIZED**

#### *.01 In General*

The Treasury Department and the IRS intend to issue regulations providing that a transferee may rely upon a certification described in section 7.02 or section 7.03 of this notice to determine the amount of liabilities of the partnership that are included in the amount realized on a transfer for purposes of section 1446(f), unless the transferee has actual knowledge that the certification is incorrect or unreliable.

#### *.02 Transferor Certification*

A transferor that is not a controlling partner (as defined below) may provide to the transferee a certification (signed under penalties of perjury and including a U.S. TIN, to the extent required under section 4.01 of this notice) that provides (i) the amount of the transferor’s share of partnership liabilities reported on the most recently received Schedule K-1 (Form 1065) from the partnership, for a partnership taxable year that closed no more than 10 months before the date of transfer, and (ii) that the transferor does not have actual knowledge of events occurring after the Schedule K-1 (Form 1065) was issued

that would cause the amount of the transferor’s share of partnership liabilities at the time of the transfer to be significantly different than the amount shown on the Schedule K-1 (Form 1065). A difference in the amount of the transferor’s share of partnership liabilities of 25 percent or less is not a significant difference. A transferor is a controlling partner for purposes of this section 7.02 if the transferor (and related persons) owned a 50 percent or greater interest in capital, profits, deductions or losses in the 12 months before the transfer.

#### *.03 Partnership Certification*

The partnership may issue a certification, signed under penalties of perjury, no earlier than 30 days before the transfer, that provides (i) the amount of the transferor’s share of partnership liabilities, which may be the amount reported on the most recently prepared Schedule K-1 (Form 1065), and (ii) that the partnership does not have actual knowledge of events occurring after its determination of the amount of the transferor’s share of partnership liabilities that would cause the amount of the transferor’s share of partnership liabilities at the time of the transfer to be significantly different than the amount shown on the certification provided to the transferee. A difference in the amount of the transferor’s share of partnership liabilities of 25 percent or less is not a significant difference.

### **SECTION 8. WITHHOLDING LIMITATION IN CERTAIN CASES RELATING TO THE TRANSFEROR’S SHARE OF PARTNERSHIP LIABILITIES**

The Treasury Department and the IRS intend to issue regulations providing that if the amount otherwise required to be withheld under section 1446(f) exceeds the amount realized less the decrease in the transferor partner’s share of partnership liabilities, then the amount of withholding required by section 1446(f)(1) is the amount realized less the decrease in the transferor partner’s share of partnership liabilities. In addition, if a transferee is unable to determine the amount realized because it does not have knowledge of the transferor partner’s share of partnership liabilities (and does not receive a certifi-

cation described in section 7.02 or section 7.03 of this notice on which it can rely), then the amount of withholding required is the entire amount realized, determined without regard to the decrease in the transferor partner's share of partnership liabilities. In both cases, the amount of withholding under section 1446(f) is generally the amount that the transferor would, but for the transferee remitting it as withholding under section 1446(f), receive from the transferee. A transferee may rely on this rule only if the transferee (1) is not the partnership in which the transferor is a partner, and (2) is not a related person to the transferor. A transferee applying this section 8 must check the box on line 5c of Part I of Form 8288 and include the amount withheld in the total reported on line 6, Part I of Form 8288 and line 2 of Form 8288-A.

#### **SECTION 9. DETERMINATION OF APPLICABILITY OF SECTION 1446(f)(1) TO DISTRIBUTIONS BY PARTNERSHIPS**

The Treasury Department and the IRS intend to issue regulations providing that for purposes of section 1446(f)(1), if a partnership makes a distribution to a partner, the partnership may rely on its books and records, or on a certification received from the distributee partner, to determine whether the distribution exceeds the partner's basis in its partnership interest, provided that the partnership does not know or have reason to know that its books and records, or the distributee partner's certification, is incorrect and the partnership retains a record of the documentation relied upon to establish the partner's basis for the period described in section 4.04 of this notice.

#### **SECTION 10. COORDINATION WITH SECTION 1445 WITHHOLDING**

The Treasury Department and the IRS intend to issue regulations providing that a transferee that is otherwise required to withhold under section 1445(e)(5) or § 1.1445-11T(d)(1) with respect to the amount realized, as well as under section 1446(f)(1), will be subject to the payment and reporting requirements of section 1445 only, and not section 1446(f)(1),

with respect to such amount. However, this rule applies only if the transferor has not obtained a withholding certificate that is provided for in the last sentence of § 1.1445-11T(d)(1). If the transferor has obtained such a withholding certificate, the transferee must withhold the greater of the amounts required under section 1445(e)(5) or section 1446(f)(1). Under these circumstances, a transferee that has complied with the withholding requirements under either section 1445(e)(5) or section 1446(f)(1), as applicable, will be deemed to satisfy the other withholding requirement.

#### **SECTION 11. TIMING OF THE WITHHOLDING REQUIREMENT OF SECTION 1446(f)(4)**

The Treasury Department and the IRS intend to issue regulations providing that the withholding requirements in section 1446(f)(4) will not apply until regulations or other guidance have been issued under that section.

#### **SECTION 12. TIERED PARTNERSHIPS**

The Treasury Department and the IRS intend to issue regulations clarifying that if a transferor transfers an interest in a partnership (upper-tier partnership) that owns an interest (directly or indirectly) in another partnership (lower-tier partnership), and the lower-tier partnership would have effectively connected gain upon the deemed transaction described in section 864(c)(8)(B)(i)(I) that would be taken into account by the transferor at the time of the transfer of the interest in the upper-tier partnership, a portion of the gain recognized by the transferor is characterized as effectively connected gain. These regulations will require lower-tier partnerships to furnish information to their partners in order for their indirect partners to be able to comply with sections 864(c)(8) and 1446(f). See section 6031(b); § 1.6031(b)-1T.

#### **SECTION 13. REQUEST FOR COMMENTS AND CONTACT INFORMATION**

The Treasury Department and the IRS request comments on the rules to be issued under section 1446(f). In addition to

requests for comments identified in the PTP Notice (which may also be applicable to non-PTP interests) and in section 2 of this notice, comments are requested concerning the following:

(i) rules for determining the amount realized, including when the amount of required withholding may exceed the proceeds of a sale of a partnership interest;

(ii) procedures for reducing the amount required to be withheld, such as (a) limiting the withholding to the tax on the gain recognized (if determinable) and (b) relieving identifiable historically compliant taxpayers from withholding;

(iii) credit and refund forms and processes, such as (a) forms of standardized documentation that could be used by transferors when claiming refunds or credits for the withholding to facilitate IRS's evaluation of such claims, or (b) providing for an expedited refund procedure if a taxpayer can demonstrate substantial overwithholding;

(iv) rules implementing the requirement for a partnership to withhold under section 1446(f)(4) on distributions to a transferee that fails to withhold under section 1446(f)(1);

(v) rules that should apply under sections 864(c)(8), 897, 1445, and 1446(f) when a partner disposes of an interest in a partnership that holds both U.S. real property interests and other property used in the conduct of a trade or business in the United States; and

(vi) the calculation of the amount of gain or loss from the sale, exchange, or other disposition of a partnership interest that is effectively connected with the conduct of a trade or business in the United States by operation of section 864(c)(8).

Comments must be submitted by June 2, 2018. All comments received will be available for public inspection and copying.

Written comments responding to this notice should be mailed to:

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2018-29)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Please include "Notice 2018-29" on the cover page.

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Internal Revenue Service  
Courier's Desk  
1111 Constitution Ave., N.W.  
Washington, DC 20224  
Attn: CC:PA:LPD:PR  
(Notice 2018-29)

Alternatively, taxpayers may submit comments electronically to the following email address: [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov). Please include "Notice 2018-29" in the subject line of any electronic submission.

The principal authors of this notice are Ronald M. Gootzeit of the Office of Associate Chief Counsel (International) and Kevin I. Babitz of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS also participated in its development. For further information regarding this notice contact Mr. Gootzeit at 202.317.4953 (not a toll-free number).

## National Security Considerations with Respect to Country-by-Country Reporting

### Notice 2018-31

#### SECTION 1. OVERVIEW

This notice provides additional guidance concerning country-by-country (CbC) reporting requirements under section 6038 and § 1.6038-4. In consideration of the national security interests of the United States, this notice addresses modifications to the reporting requirement under § 1.6038-4 with respect to certain U.S. multinational enterprise (MNE) groups. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to amend § 1.6038-4 to incorporate the guidance described in this notice. Prior to the issuance of these amendments, U.S. MNE groups may rely on the provisions of section 3 of this notice.

#### SECTION 2. BACKGROUND

On December 23, 2015, a notice of proposed rulemaking (REG-109822-15) relating to the furnishing of CbC reports by certain United States persons under section 6038 was published in the **Federal Register** (80 FR 79795). The preamble to the proposed regulations requested comments concerning the need for a national security exception to the CbC information reporting requirement. On June 30, 2016, the Treasury Department and the IRS published final regulations (TD 9773) requiring annual CbC reporting on Form 8975, *Country-by-Country Report* (CbC report), by certain United States persons that are ultimate parent entities of U.S. MNE groups that have annual revenue for the preceding reporting period of \$850,000,000 or more. The final regulations do not provide a general exception for information that may relate to national security, but the preamble to the final regulations stated that the Department of Defense would continue to consider the national security implications of CbC reports in particular fact patterns. Based on subsequent consultations with the Department of Defense, the Treasury Department and the IRS have determined that national security interests require modifications to the reporting requirements for U.S. MNE groups that are specified national security contractors as defined in section 3.01 of this notice and that have a reporting requirement under § 1.6038-4.

#### SECTION 3. MODIFICATIONS TO CBC REPORTING FOR SPECIFIED NATIONAL SECURITY CONTRACTORS

##### *.01 Specified National Security Contractor*

For purposes of this notice, a U.S. MNE group is a "specified national security contractor" if more than 50 percent of the U.S. MNE group's annual revenue, as determined in accordance with U.S. generally accepted accounting principles, in the preceding reporting period is attributable to contracts with the Department of Defense or other U.S. government intelligence or security agencies.

##### *.02 Modifications to Manner of Reporting on Form 8975*

The Treasury Department and the IRS intend to amend § 1.6038-4 to provide the definition of specified national security contractor and modifications to the manner of reporting on Form 8975 for such U.S. MNE groups. The amended regulations will provide that U.S. MNE groups that have a Form 8975 filing obligation under § 1.6038-4 and are specified national security contractors may provide Form 8975 and Schedules A (Form 8975) in the following manner:

- Complete Form 8975 with a statement at the beginning of Part II, Additional Information, that the U.S. MNE group is a specified national security contractor as defined in this notice;
- Complete one Schedule A (Form 8975) for the Tax Jurisdiction of the United States with aggregated financial and employee information for the entire U.S. MNE group in Part I, Tax Jurisdiction Information, and only the ultimate parent entity's information in Part II, Constituent Entity Information; and
- Complete one Schedule A (Form 8975) for the Tax Jurisdiction "Stateless" with zeroes in Part I, Tax Jurisdiction Information, and only the ultimate parent entity's information in Part II, Constituent Entity Information.

No other Schedule A (Form 8975) or additional information is required.

##### *.03 Amended Form 8975 and Schedules A (Form 8975)*

A specified national security contractor that has already filed Form 8975 and Schedules A (Form 8975) for prior reporting periods may file an amended Federal income tax return (following the instructions for filing of amended Federal income tax returns) and attach an amended Form 8975 and Schedules A (Form 8975) in the manner provided in section 3.02 with the amended report checkbox on Form 8975 marked. Specified national security contractors that do not electronically file their amended Federal income tax returns should, in addition to filing an amended Federal income tax return with an amended Form 8975 and Schedules A (Form 8975), mail a copy of page 1 of