

Withholding Agent's customers own the stock of numerous domestic publicly traded corporations through their accounts with Withholding Agent. From time to time, such corporations may offer to buy back their stock through tender offers. A corporation that makes a tender offer for its own stock is said to make a "self tender" offer.

In a typical self tender offer, an Issuer files its offer with the Securities and Exchange Commission and makes a public announcement of its intention to redeem its stock. The Issuer typically specifies the number of shares or dollar value of stock it is willing to buy and the price it is willing to pay for the shares (although sometimes the Issuer allows shareholders to state the prices at which they are willing to sell – commonly referred to as a "Dutch Auction"). The Issuer sometimes retains the option to purchase more shares than initially stated, and can amend its offer at will. At times such tender offers may be contingent. For instance, the Issuer may require that a certain minimum aggregate number of shares be tendered before it purchases any shares.

The self tender offer is held open for a period of time, typically 30-60 days, during which shareholders can tender (i.e., offer to sell) their shares. If a shareholder holds its shares in the Issuer through a broker (such as Withholding Agent), the shareholder's instructions regarding how much of its stock it wishes to sell are communicated to the Issuer through the broker.

After the expiration of the offer, the Issuer determines the number of shares that its shareholders have offered to sell and whether any contingencies in the Issuer's offer have been satisfied. If more shares are offered by shareholders in the aggregate than the Issuer is willing to buy, the number of shares actually purchased from each shareholder is generally a pro rata amount of the shares each shareholder tendered. Once the Issuer determines the proration factor, it purchases the shares and the shareholders receive payment. Those who own shares through a brokerage account receive the payment through that account, and untendered shares (due to proration) are returned. At that point, the Issuer announces the actual number of shares purchased.

Prior to the Issuer's announcement at the conclusion of the tender offer process, no shareholder can know whether its proportionate interest in the Issuer has been reduced. For instance, an Issuer may offer to buy back 5% of its outstanding stock, and a shareholder ("S") may tender 10% of the stock in the Issuer that S owns. If all shareholders of the Issuer offer in the aggregate to sell 10% of the Issuer's shares back to the Issuer, the Issuer typically will purchase only half of the aggregate shares offered. Because shareholders in the aggregate experience the exact same percentage reduction in their shareholdings as S, S's proportionate interest in the Issuer would be unchanged, and therefore the redemption would be treated as a dividend with respect to S. In contrast, if only a select group of shareholders decides to tender their shares (which is typical in these events), this may result in a disproportionate reduction in the shareholder's interest and may result in sale or exchange treatment for the shareholder.

Withholding Agent would institute the following procedure, described in the following paragraphs 1 through 14 (“Proposed Escrow Procedure”) for foreign account holders who receive payments pursuant to self tender offers:

(1) At the time it receives a Tender Payment from an Issuer with respect to stock sold by a foreign account holder, Withholding Agent will set aside in an escrow account 30% (or the portfolio dividend rate specified by the appropriate tax treaty for a qualifying foreign account holder) of the amount and will credit the foreign account holder’s account with the balance of the Tender Payment. The amount set aside will include 30% (or the appropriate portfolio dividend rate provided under a treaty) of the amount paid to qualified intermediaries (whether or not they have assumed primary withholding responsibility) and to any Withholding Partnerships or Withholding Trusts (WP/WT).

(2) At the same time, Withholding Agent will provide the following information and instructions, in writing, to the foreign account holder: (i) the total number of Issuer’s shares outstanding before and after the tender; (ii) an explanation of the conditions under which the Tender Payment will be treated as a dividend or a payment in exchange for stock for Federal income tax purposes (including an explanation of the constructive ownership rules under IRC §318); (iii) a request that the beneficial owner(s) of the account provide a certification (“Tender Certification”), under penalties of perjury, within 60 days of the Tender Payment, stating whether the Tender Payment should be treated as either a dividend or a payment in exchange for stock under the Code. See paragraph 4 regarding Withholding Agent’s due diligence requirements.

(3) The content of the Tender Certification must include the following information: (i) the beneficial owner’s name and account number; (ii) the Issuer’s name; (iii) the total shares of the Issuer outstanding immediately before and immediately after the tender; (iv) a certification from the beneficial owner that either (a) the Tender Payment should be treated as a payment in exchange for the shares because the beneficial owner’s proportionate interest has been reduced, (b) the Tender Payment should be treated as a payment in exchange for the shares because the beneficial owner’s interest in the Issuer is completely terminated, or (c) the Tender Payment should be treated as a dividend; (v) with respect to the certifications in (iv)(a) and (b), the number of shares actually and constructively owned by the beneficial owner before and after the tender and the beneficial owner’s percentage ownership before and after the tender; (vii) a penalties of perjury statement; (viii) the signature and capacity of the beneficial owner and date of signature.

(4)(i) If, within the 60-day period, Withholding Agent receives from the foreign account holder a Tender Certification stating that the Tender Payment should be treated as a payment in exchange for stock and if Withholding Agent does not know or have reason to know that the information in the Tender Certification is unreliable or incorrect, Withholding Agent will credit the account with the amount set aside with respect to the beneficial owner who provides the certification. The entire amount paid (including the

amount initially set aside) will be reported on Form 1042-S as “Capital gains” (income code 09) that is “Exempt under an Internal Revenue Code section (income other than portfolio interest)” (exemption code 02).

(ii) If Withholding Agent knows or has reason to know that the information in the Tender Certification is unreliable or incorrect, the Withholding Agent must treat the payment to the account holder as a payment for which no Tender Certification has been received and must follow the withholding and reporting procedures in paragraph (6). For this purpose, Withholding Agent will independently calculate whether the redemption of the account holder’s shares should be treated as a sale or exchange or as a dividend based on the number of shares the foreign account holder owned (actually and constructively) before and after the transaction and the total number of outstanding shares of Issuer before and after the Tender Offer. If Withholding Agent’s determination is not consistent with the Tender Certification provided by the foreign account holder in the Tender Certification, the Withholding Agent will be deemed to know or have reason to know that the information in the Tender Certification is unreliable or incorrect.

(5) If, within the 60-day period, Withholding Agent receives a Tender Certification stating that the Tender Payment should be treated as a dividend, Withholding Agent will treat the amount set aside as tax withheld as of the time it receives the Tender Certification, and will deposit that amount pursuant to the applicable regulations. The entire amount paid (including the tax withheld) will be reported on Form 1042-S as “Dividends paid by U.S. corporations – general” (income code 06). The tax rate will be reported as 30% or the applicable treaty rate.

(6) If Withholding Agent does not receive a Tender Certification, or is treated under paragraph (4)(ii) as not receiving a Tender Certification within the 60-day period, Withholding Agent will treat the amount set aside as tax withheld as of the 61st day, and will deposit that amount pursuant to the applicable regulations. The entire amount paid (including the tax withheld) will be reported on Form 1042-S as “Dividends paid by U.S. corporations – general” (income code 06). The tax rate will be reported as 30% or the applicable treaty rate.

(7) If, after the 60-day period has expired, Withholding Agent receives a Tender Certification from a foreign account holder that the Tender Payment should be treated as a payment in exchange for stock and the conditions stated in Treas. Reg. §1.1461-2(a) are satisfied, Withholding Agent may apply the refund or offset procedures of that paragraph to compensate its account holder for withheld tax that Withholding Agent deposited at the end of the 60-day period, provided that Withholding Agent does not know or have reason to know, including on the basis of its own calculations as described in paragraph (4)(ii), that the Tender Certification is unreliable or incorrect.

(8) If, after the 60-day period has expired, Withholding Agent determines that the Tender Payment was incorrectly treated as a distribution in exchange for stock, the procedures set forth regarding underwithholding in Treas. Reg. §1.1461-2(b) are applicable.

(9) The foregoing procedure shall apply only to beneficial owners who are properly documented under the rules of Treas. Reg. §1.1441-1 *et seq.* Withholding Agent will withhold at 30% with respect to any beneficial owner that is presumed to be a foreign person, but that is not properly documented. Withholding agent will report the entire amount paid (including the tax withheld) on Form 1042-S as “Dividends paid by U.S. corporations – general” (income code 06).

(10) If the amount the withholding agent credits to the account of the foreign account holder from the escrow account includes an amount in excess of the Tender Payment, such as interest accrued on the escrowed funds, the Withholding Agent shall report and withhold on such excess amount in accordance with the rules under Chapter 3 of the Internal Revenue Code.

(11) As noted in paragraph 1, only Withholding Agent will establish an escrow account and the amounts set aside in the escrow account will include 30% (or the appropriate treaty rate applicable to dividends) on payments made to direct account holders that are Qualified Intermediaries (including QIs that have assumed primary withholding responsibility) and WPs/WTs. Thus, even though QIs that have assumed primary withholding responsibility under 1441 and WPs/WTs generally receive payments without any withholding by Withholding Agent, this will not be the case with respect to amounts paid pursuant to the Tender Offer. Rather, based on the procedure below, QIs, and WPs/WTs will provide Withholding Agent with a withholding statement as required in section 6.02 of the QI Rev. Proc. (and corresponding provisions of the WP/WT Rev. Proc.) that details the appropriate rate of withholding and information reporting for amounts paid to the QI or WP/WT. For purposes of simplicity, the procedure described below refers only to QIs but would be equally applicable to WP/WTs.

(i) Withholding Agent will provide the following information and instructions, in writing, to the QI and the QI will provide the same information and instructions to its account holders:¹ (i) the total number of Issuer’s shares outstanding before and after the tender; (ii) an explanation of the conditions under which the Tender Payment will be treated as a dividend or a payment in exchange for stock for Federal income tax purposes (including an explanation of the constructive ownership rules under IRC §318); (iii) a request that the beneficial owner(s) of the account provide the withholding agent’s Tender Certification, under penalties of perjury, within 60 days of the Tender

¹ If there is a chain of QI’s, the procedure will be repeated at each level.

Payment, stating whether the Tender Payment should be treated as either a dividend or a payment in exchange for stock under the Code.

(ii) The content of the Tender Certification must include the following information: (i) the beneficial owner's name and account number; (ii) the Issuer's name; (iii) the total shares of the Issuer outstanding immediately before and immediately after the tender; (iv) a certification from the beneficial owner that either (a) the Tender Payment should be treated as a payment in exchange for the shares because the beneficial owner's proportionate interest has been reduced, (b) the Tender Payment should be treated as a payment in exchange for the shares because the beneficial owner's interest in the Issuer is completely terminated, or (c) the Tender Payment should be treated as a dividend; (v) with respect to the certifications in (iv)(a) and (b), the number of shares actually and constructively owned by the beneficial owner before and after the tender and the beneficial owner's percentage ownership before and after the tender; (vi) a penalties of perjury statement; (vii) the signature and capacity of the beneficial owner and date of signature

(iii)(a) If, within the 60-day period, QI receives from the its account holder a Tender Certification stating that the Tender Payment should be treated as a payment in exchange for stock and if QI does not know or have reason to know that the information in the Tender Certification is unreliable or incorrect, QI will reflect such treatment in its withholding statement provided to Withholding Agent, and, based upon the withholding statement, Withholding Agent may release payment from its escrow and QI will credit the account with the amount set aside by the withholding agent with respect to the beneficial owner who provides the certification. The entire amount paid (including the amount initially set aside) will be reported on the QI's pooled basis Form 1042-S as "Capital gains" (income code 09) that is "Exempt under an Internal Revenue Code section (income other than portfolio interest)" (exemption code 02).

(b) If QI knows or has reason to know that the information in the Tender Certification is unreliable or incorrect, the QI must treat the payment to the account holder as a payment for which no Tender Certification has been received and must follow the withholding and reporting procedures in paragraph (v) below. For this purpose, QI will make an independent calculation of whether the redemption of the account holder's shares should be treated as a sale or exchange or as a dividend based on the number of shares the foreign account holder owned (actually and constructively) before and after the transaction and the total number of outstanding shares of the Issuer before and after the Tender Offer. If QI's determination is not consistent with the Tender Certification provided by the account holder in the Tender Certification, the QI will be deemed to know or have reason to know that the information in the Tender Certification is unreliable or incorrect. QI's compliance will be verified as part of the QI audit process.

(iv) If, within the 60-day period, QI receives a Tender Certification stating that the Tender Payment should be treated as a dividend, the QI will reflect such treatment in its

withholding statement and will treat the payment as a dividend for purposes of its reporting and withholding responsibilities under the QI agreement. The entire amount paid (including the tax withheld) will be reported on its pooled basis Form 1042-S as "Dividends paid by U.S. corporations – general" (income code 06). The tax rate will be reported as 30% or the applicable treaty rate.

(v) If the QI does not receive a Tender Certification, or is treated under paragraph (iii)(b) as not receiving a Tender Certification, within the 60-day period, the QI will reflect such treatment in its withholding statement provided to Withholding Agent and will treat the payment as a dividend for purposes of its reporting and withholding responsibilities under the QI agreement. The entire amount paid (including the tax withheld) will be reported on its pooled basis Form 1042-S as "Dividends paid by U.S. corporations – general" (income code 06). The tax rate will be reported as 30% or the applicable treaty rate.

(vi) If, after the 60-day period has expired, the QI receives a Tender Certification from a foreign account holder that the Tender Payment should be treated as a payment in exchange for stock and the conditions stated in section 9 of the QI agreement are satisfied, QI may apply the refund or offset procedures of that paragraph, provided that QI does not know or have reason to know, including on the basis of its own calculations as described in paragraph (11)(iii)(b), that the Tender Certification is unreliable or incorrect.

(vii) If, after the 60-day period has expired, the QI determines that the Tender Payment was incorrectly treated as a distribution in exchange for stock, the procedures set forth regarding underwithholding in Section 9 of the QI agreement relating to adjustments for over- and under- withholding are applicable.

(viii) The foregoing procedure shall apply only to QI account holders that are beneficial owners who are properly documented under the rules of Treas. Reg. §1.1441-1 *et seq.* The QI will treat beneficial owners who are undocumented as undocumented owners subject to 30 percent withholding in its withholding statement. QI will report the entire amount paid (including the tax withheld) on its pooled basis Form 1042-S as "Dividends paid by U.S. corporations – general" (income code 06).

(12) If Withholding Agent has an account holder that is an intermediary that is not a QI ("NQI") (or a flow-through that is not a WP or WT), Withholding Agent must apply the rules of subparagraphs (i) through (iii) below.

(i) Withholding Agent will provide the following information and instructions, in writing, to the NQI and the NQI will provide the same information and instructions to its account holders, including account holders that are intermediaries or flow-throughs: (i) the total number of Issuer's shares outstanding before and after the tender; (ii) an explanation of the conditions under which the Tender Payment will be treated as a dividend or a payment in exchange for stock for Federal income tax purposes (including

an explanation of the constructive ownership rules under IRC §318); (iii) a request that the beneficial owner(s) of the account provide the withholding agent's Tender Certification, under penalties of perjury, within 60 days of the Tender Payment, stating whether the Tender Payment should be treated as either a dividend or a payment in exchange for stock under the Code.

(ii) The content of the Tender Certification must include the following information: (i) the beneficial owner's name and account number; (ii) the Issuer's name; (iii) the total shares of the Issuer outstanding immediately before and immediately after the tender; (iv) a certification from the beneficial owner that either (a) the Tender Payment should be treated as a payment in exchange for the shares because the beneficial owner's proportionate interest has been reduced, (b) the Tender Payment should be treated as a payment in exchange for the shares because the beneficial owner's interest in the Issuer is completely terminated, or (c) the Tender Payment should be treated as a dividend; (v) with respect to the certifications in (iv)(a) and (b), the number of shares actually and constructively owned by the beneficial owner before and after the tender and the beneficial owner's percentage ownership before and after the tender; (vi) a penalties of perjury statement; (vii) the signature and capacity of the beneficial owner and date of signature.

(iii) The NQI must provide the tender certification to withholding agent together with the otherwise required documentation and a withholding statement made in accordance with the tender certification.

(13) Withholding Agent may treat the Tender Payment as a dividend or a payment in exchange for stock based on the information and documentation provided to it under paragraph (12). Withholding agent will withhold and report on a specific payee basis in accordance with this information. The due diligence procedures of paragraph 4(ii) will apply to NQI or flow-through account holders.

(14) Withholding Agent must treat beneficial owners that hold through stock in Issuer through QIs, WP/WTs, NQIs and flow-throughs that are U.S. nonexempt recipients in accordance with the Tender Certifications obtained from those U.S. nonexempt recipients and must instruct foreign intermediaries and foreign flow-through entities to do the same. Therefore, if a Tender Payment to a U.S. nonexempt recipient is treated as a dividend, the Tender Payment must be reported on Form 1099-DIV, and if such Tender Payment is treated as a payment in exchange for stock, it must be reported on Form 1099-B.

Withholding agent has requested a ruling that if it follows the Proposed Escrow Procedure and uses the Tender Certification outlined above, Withholding Agent will satisfy its tax withholding, reporting and deposit obligations under Chapter 3 of the Internal Revenue Code with respect to any payment made to a foreign account holder pursuant to a self tender offer.

Section 317(b) provides that stock shall be treated as “redeemed” by a corporation if the corporation acquires its own stock from a shareholder in exchange for property, including money, as provided by IRC §317(a).

Section 302 provides that a redemption is treated as either “a distribution in part or full payment in exchange for the stock” under IRC §302(a) or “a distribution of property to which IRC §301 applies” under IRC §302(d), except as otherwise provided under Subchapter C.

A redemption is treated as an exchange under the following circumstances:

- (1) The distribution is not “essentially equivalent to a dividend”. IRC §302(b)(1).
- (2) The distribution is “substantially disproportionate with respect to the shareholder,” meaning that (in addition to other requirements) after the distribution, the percentage of voting stock owned by a shareholder (and attributed by IRC §318 to that shareholder) after the redemption is less than 80% of that percentage before the redemption. IRC §302(b)(2).
- (3) The redemption “is in complete redemption of all of the stock of the corporation owned by the shareholder.” IRC §302(b)(3).
- (4) A noncorporate shareholder receives a distribution in redemption of its stock in partial liquidation of the distributing corporation. IRC §302(b)(4).

IRC §302(b)(5) provides that failure to qualify under IRC §302(b)(2)-(4) “shall not be taken into account” in determining whether the distribution is not essentially equivalent to a dividend under IRC §302(b)(1).

The constructive ownership rules of IRC §318(a) generally apply to determine ownership of stock for IRC §302 purposes. *But see* IRC §302(c)(2), discussed below.

Section 302(d) provides that, if none of the four circumstances described in IRC §302(b)(1)-(4) apply, the redemption is treated as a distribution to which IRC §301 applies.

If IRC §301 applies to a distribution, it is treated as a dividend to the extent of earnings and profits of the distributing corporation (as provided in IRC §316), then as a return of capital to the extent of the shareholder’s adjusted basis. IRC §301(c)(1), (2). If the amount of a distribution exceeds both the corporation’s earnings and profits and the shareholder’s adjusted basis, the excess is treated as a gain from the sale or exchange of property. IRC §301(c)(3).

Treas. Reg. §1.302-2(b) provides, “All distributions in pro rata redemptions of a part of the stock of a corporation generally will be treated as distributions under IRC §301 if the corporation has only one class of stock outstanding.”

Under Treas. Reg. §1.302-2(b), whether a distribution is not essentially equivalent to a dividend “depends upon the facts and circumstances of each case.” In *United States v. Davis*, 397 U.S. 301, *reh’g denied*, 397 U.S. 1971 (1970), the Supreme Court ruled that a redemption is essentially equivalent to a dividend unless the shareholder experiences a “meaningful reduction in proportionate interest” in the Issuer. *Davis* also holds that the attribution rules under IRC §318(a) apply to determine whether there has been such a meaningful reduction.

In Rev. Rul. 75-502, 1975-2 C.B. 111, the IRS listed the following factors to consider in determining whether there has been a meaningful reduction in a shareholder’s ownership interest: (1) the shareholder’s ability to control the corporation; (2) retained rights to share in the corporation’s current earnings and accumulated surplus; and (3) retained rights to share in the net assets upon liquidation of the corporation. In most instances, a shareholder in a publicly traded corporation is unlikely to control the corporation even through attribution. Likewise, any reduction in the interest of such a shareholder is likely to be meaningful. In Rev. Rul. 76-385, 1976-2 C.B. 92, the IRS ruled that a shareholder who owned (actually and constructively) 0.0001118% of a publicly traded corporation’s stock before a redemption, and 0.0001081% (entirely constructively) after the redemption, had experienced a “meaningful reduction in proportionate interest” in the corporation under the *Davis* test. The shareholder’s interest in the corporation after the redemption was 96.7% of the shareholder’s interest before the redemption, taking constructive ownership into account.

In Rev. Rul. 82-389, 1981-2 C.B. 82, the IRS ruled that a shareholder who owned 0.2% of the common stock of a widely held, publicly traded company before a redemption, and 0.2% of that stock after the redemption, did not satisfy the “meaningful reduction” standard of *Davis*, and that the redemption did not qualify for exchange treatment.

The “family” constructive ownership rules of IRC §318(a)(1) generally apply to determinations under IRC §302, but not when determining if a shareholder has completely terminated its interest in the corporation under IRC §302(b)(3) and certain other conditions are met. IRC §302(c)(1), (2). To avoid the family constructive ownership rules, the shareholder must have no interest in the corporation (other than as a creditor) immediately after the distribution, must not acquire any such interest (other than by bequest or inheritance) within 10 years of the distribution, and must agree to notify the Secretary if it acquires such an interest and to retain certain records. IRC § 302(c)(2)(A); Treas. Reg. §1.302-4. Other conditions also apply to avoid the family constructive ownership rules in the case of distributions to entities. IRC §302(c)(2)(C).

IRC §§1441 and 1442 require a 30% tax to be withheld on certain payments to foreign persons (unless an income tax treaty or Code exemption applies). Among the types of payments on which the statute requires withholding are dividends.

Treas. Reg. §1.1441-1(b)(1) generally requires a withholding agent to withhold a 30% tax from amounts paid to foreign persons that are “subject to withholding.”

Treas. Reg. §1.1441-2(a) provides, “the term *amounts subject to withholding* means amounts from sources within the United States that constitute either fixed or determinable annual or periodical income described in paragraph (b) of this section or other amounts subject to withholding described in paragraph (c) of this section.”

Treas. Reg. §1.1441-2(b)(1) provides that “fixed or determinable annual or periodical income” (“FDAP”) includes all income described in IRC §61, unless the item of income is described in Treas. Reg. §1.1441-2(b)(2). Section 61 defines gross income to include all income from whatever source derived, including gains derived from dealings in property and dividends. However, “gains derived from the sale of property” are described in Treas. Reg. §1.1441-2(b)(2)(i), and thus are not FDAP. A return of a shareholder’s capital is not gross income under IRC §61, and thus also is not FDAP.

Treas. Reg. §1.1441-3(c) requires a corporation that makes a distribution with respect to its stock, as well as any intermediary (such as a broker) making a payment of such a distribution, to withhold on the entire amount of the distribution, unless it elects otherwise under Treas. Reg. § 1.1441-3(c), if the payment is made to a foreign person.

Treas. Reg. §1.1441-3(c)(2)(i)(B) provides that a “distributing corporation or intermediary may elect to not withhold on a distribution to the extent it represents a distribution in part or full payment in exchange for stock.” Treas. Reg. §1.1441-3(c)(2)(i) provides that a corporation or intermediary makes the foregoing election “by actually reducing the amount of withholding at the time that the payment is made.”

Treas. Reg. §1.1441-3(d)(1) provides that, if the determination of the amount of income subject to tax depends upon facts not known at the time of payment, a withholding agent must withhold 30% of the amount that may ultimately be determined to be subject to tax. That paragraph also provides that, in the alternative, the withholding agent may make a reasonable estimate of the amount of income that will be subject to tax and “set aside a corresponding portion of the amount due under the transaction and hold such portion in escrow until the amount from U.S. sources or the taxable amount can be determined, at which point withholding becomes due under §1.1441-1.”

Treas. Reg. §1.1441-1(e) provides rules governing the obligations of qualified intermediaries (“QIs”), nonqualified intermediaries, and US withholding agents relating to withholding certificates, withholding statements, and documentation. Treas. Reg.

§1.1441-5 provides similar rules governing the obligations of withholding foreign partnerships and trusts and nonwithholding foreign partnerships and trusts.

Treas. Reg. §1.1461-1(a)(1) requires every withholding agent who withholds tax pursuant to IRC §§1441-1443 to deposit the tax withheld with an authorized financial institution as provided in Treas. Reg. § 1.6302-2(a).

Treas. Reg. §1.1461-1(b) requires withholding agents to file an annual income tax return reporting the amount of income paid and tax withheld.

Treas. Reg. §1.1461-1(c) requires withholding agents to file information returns and provide statements to payees with respect to amounts subject to reporting under the regulations. Treas. Reg. §1.1461-1(c)(3)(ii) requires that withholding agents report a “description of each category of income paid based on the income codes provided on the form (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars.” Treas. Reg. §1.1461-1(c)(3)(iii) requires that withholding agents report the “rate of withholding applied or the basis for exempting the payment from withholding (based on exemption codes provided on the form).”

In this case, the Proposed Escrow Procedure satisfies the withholding, reporting and deposit requirements of the regulations under IRC §1441 and the Tender Certificate captures the information required to make a determination under IRC §302. Accordingly, the Proposed Escrow Procedure is an adequate escrow procedure under Treas. Reg. §1.1441-3(d)(1).

Based on the information submitted and the representations made, If Withholding Agent follows the Proposed Escrow Procedure and uses the Tender Certification outlined above, Withholding Agent will satisfy its tax withholding, reporting and deposit obligations under Chapter 3 of the Internal Revenue Code with respect to any payment made to a foreign account holder pursuant to a self tender offer.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Except as specifically set forth above, no opinion is expressed regarding the federal tax consequences of the transactions described above under any other provisions of the Code or regulations. For example, no opinion is expressed regarding whether any particular foreign account holder is entitled to dividend or exchange treatment with respect to any tender offer.

A copy of this letter ruling should be attached to Taxpayer’s Form 1042 for the appropriate year.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Valerie Mark Lippe
Senior Technical Reviewer, Branch 2
Associate Chief Counsel
(International)

cc: