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## IRS Updates Participating FFI Agreement

The IRS issued Revenue Procedure 2017-16, 2017-3 IRB (<https://www.irs.gov/pub/irs-drop/rp-17-16.pdf>), in which it has provided the text of a foreign financial institution (FFI) agreement with the IRS to be entered into by an FFI to be treated as a “participating FFI” under Section 1471(b) and Treasury Regulation Section 1.1471-4, as well as guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) on complying with the terms of the FFI agreement, as modified by the Model 2 IGA. (Section references are to the Internal Revenue Code of 1986, as amended [the Code].)

## IRS Releases Final Qualified Intermediary Withholding Agreement

The IRS issued Revenue Procedure 2017-15, 2017-3 IRB (<https://www.irs.gov/pub/irs-drop/rp-17-15.pdf>), in which it has set out the final qualified intermediary withholding agreement (QI agreement) that foreign persons may enter with the IRS under Treasury Regulation Section 1.1441-1(e)(5) to simplify their obligations as withholding agents under chapters 3 and 4 of the Code and as payors under chapter 61 of the Code and Section 3406 for amounts paid to their account holders. The QI agreement also allows certain foreign persons to enter into an agreement with the IRS to act as qualified derivatives dealers. In addition, the IRS has announced that because updated withholding foreign partnership (WP) and withholding foreign trust (WT) agreements have not yet been published, WPs and WTs with agreements currently in effect may continue to treat those agreements as in effect until updated agreements are issued later this month.

## Final and Temporary FATCA Regulations Coordinate With Existing Withholding Rules

The IRS has issued final and temporary regulations (TD 9808, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-06/pdf/2016-31590.pdf>) on withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, and portfolio interest paid to nonresident alien individuals and foreign corporations. The changes coordinate the documentation, withholding and reporting provisions regimes under chapter 3 of the Code (information reporting and withholding on foreign persons), chapter 61 of the Code (information reporting), Section 871 (the tax on nonresident alien individuals), Section 3406 (backup withholding) and Section 6402 (disclosure of return information) with those required under the Foreign Account Tax Compliance Act (FATCA) provisions. The text of the temporary regulations also serves as the text of contemporaneously issued proposed regulations.

## Final and Temporary Regulations Modify and Add to FATCA Reporting and Withholding Rules

The IRS also released final and temporary regulations (T.D. 9809, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-06/pdf/2016-31601.pdf>) under FATCA regarding information reporting by foreign financial institutions (FFIs with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. The regulations relate to information reporting by FFIs and withholding on certain payments to FFIs



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and other foreign entities. The preamble to the regulations states that the 286-page release finalizes “with changes” provisions under the March 2014 proposed regulations, and it withdraws corresponding temporary regulations.

### Proposed FATCA Regulations Would Explain Requirements for Sponsoring Entities

The IRS issued proposed regulations under FATCA (REG-103477-14, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-06/pdf/2016-31599.pdf>) that would provide guidance on the verification requirements and events of default for certain sponsoring entities. The proposed regulations also would explain the certification requirements and procedures for the IRS’ review of certain trustees of trustee-documented trusts, the procedures for IRS’ review of periodic certifications provided by registered deemed-compliant FFIs and the requirements for certifications of compliance for participating FFIs that are members of two consolidated compliance groups.

### IRS Rules on Effect of Section 481 Adjustment on the REIT Gross Income Tests and on REIT E&P

Private Letter Ruling 201652012 (<https://www.irs.gov/pub/irs-wd/201652012.pdf>) discusses (1) the effect of a Section 481(a) adjustment on the application of the real estate investment trust (REIT) gross income tests and (2) the effect of such an adjustment in determining whether a REIT dividend is paid out of earnings and profits (E&P). Section 481(a) provides that a taxpayer that changes its method of accounting takes into account necessary adjustments in computing its taxable income. Treasury Regulation Section 1.481-1(d) provides that such a “Section 481(a) adjustment” must be properly taken into account for purposes of computing gross income, adjusted gross income or taxable income in determining the amount of any item of gain, loss, deduction or credit that depends on gross income, adjusted gross income or taxable income.

### IRS Explains De Minimis Error Safe Harbor for Information Returns and Payee Statements

The IRS issued Notice 2017-9, 2017-4 IRB (<https://www.irs.gov/pub/irs-drop/n-17-09.pdf>), explaining the scope of a new de minimis error safe harbor for information returns and payee statements created by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act, P.L. 114-113). It also details the payee’s option to elect out of the safe harbor and when and how the election is made. The notice is effective for information returns required to be filed and payee statements required to be furnished after Dec. 31, 2016.

Generally, except where there is reasonable cause and no willful neglect, and subject to certain other exceptions, a failure to include all of the information required to be shown on an information return or a payee statement with respect to an information return, or any inclusion of incorrect information on an information return or payee statement, is subject to a penalty. The amount of the penalty depends on various factors. Effective for returns and statements required to be filed after Dec. 31, 2016, the PATH Act established a de minimis error safe harbor from penalties for the failure to file correct information returns and for failure to furnish correct payee statements. If the error is \$100 or less (\$25 or less in the case of errors involving tax withholding), the issuer of the information return is not required to file a corrected return and no penalty is imposed. However, if any person receiving payee statements makes an election to request a corrected statement, the penalty for failure to file a correct information return and the penalty for failure to furnish a correct payee statement continue to apply in the case of de minimis errors on that statement. Notice 2017-9 explains the scope of the safe harbor, the payee’s option to elect out of the safe harbor, and when and how the election is made.

### Taiwan-U.S. FATCA Agreement Available

The text is available of the agreement (<https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-TECRO-12-22-2016.pdf>) signed by the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States to facilitate implementation of the information reporting and withholding tax provisions of FATCA.

### MOU on 2014 Belgium-U.S. FATCA Agreement Available

The text is available of the memorandum of understanding (<https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/Understanding-Belgium.pdf>) that clarifies the intergovernmental agreement between Belgium and the United States to implement the information reporting and withholding tax provisions of FATCA.