

paragraph (c) of this section. If the partnership does not have any foreign partners (including any person presumed to be foreign under paragraph (c) of this section and any domestic trust treated as foreign under § 1.1446-3(d)) during its taxable year, it generally will not have a 1446 tax obligation. If the partnership has one or more foreign partners, it then determines under § 1.1446-2 whether it has ECTI any portion of which is allocable to one or more of the foreign partners. If the partnership has ECTI allocable to one or more of its foreign partners, the partnership computes its 1446 tax, pays over 1446 tax, and reports the amount paid in accordance with the rules in § 1.1446-3. For special rules applicable to publicly traded partnerships, see § 1.1446-4. For special rules applicable to tiered partnership structures, see § 1.1446-5.

(c) *Determining whether a partnership has a foreign partner*—(1) *In general.* Except as otherwise provided in § 1.1446-3, only a partnership that has at least one foreign partner during the partnership's taxable year can have a 1446 tax liability. The term foreign partner means any partner of the partnership who is not a U.S. person within the meaning of section 7701(a)(30). Thus, a partner of the partnership is a foreign partner if the partner is a nonresident alien individual, foreign partnership, foreign corporation, foreign estate or trust, as those terms are defined under section 7701 and the regulations thereunder, or a foreign government within the meaning of section 892 and the regulations thereunder. For purposes of this section, a partner that is treated as a U.S. person for all income tax purposes (by election or otherwise, see e.g., sections 953(d), 1504(d)) will not be a foreign partner, provided the partner has provided the partnership a valid Form W-9, "Request for Taxpayer Identification Number and Certification," or if the partnership uses other means to determine that the partner is not a foreign partner (see paragraph (c)(3) of this section). A partner that is treated as a U.S. person only for certain specified purposes is considered a foreign partner for purposes of section 1446, and a partnership must pay a withholding tax on the portion of ECTI allocable to that partner. For example, a partnership must generally pay 1446 tax on ECTI allocable to a foreign corporate partner that has made an election under section 897(i).

(2) *Forms W-8BEN, W-8IMY, and W-9*—(i) *In general.* Except as otherwise provided in this paragraph (c)(2) or

paragraph (c)(3) of this section, a partnership must determine whether a partner is a foreign partner, and the partner's tax classification (e.g., corporate or non-corporate), by obtaining from the partner a Form W-8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," Form W-8IMY, "Certificate of Foreign Intermediary, Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding," or a Form W-9, as applicable. Specifically, a foreign partner that is a nonresident alien individual, a foreign estate or trust (other than a grantor trust described in this paragraph (c)(2)), a foreign corporation, or a foreign government should provide a valid Form W-8BEN. A partner that is a foreign partnership should provide a valid Form W-8IMY. A partner that is a U.S. person (other than a grantor trust described in this paragraph (c)(2)), including a domestic partnership, should provide a valid Form W-9. An entity that is disregarded as an entity separate from its owner under § 301.7701-3 of this chapter may not submit a Form W-8BEN, W-8IMY, or Form W-9. See §§ 301.7701-1 through 301.7701-3 of this chapter for determining the U.S. Federal tax classification of a partner. To the extent that a grantor or another person is treated as the owner of any portion of a trust under subpart E of subchapter J of the Internal Revenue Code, such trust shall not provide a Form W-8BEN or Form W-9 to the partnership, except to the extent that such trust is providing documentation on behalf of the grantor or other person treated as the owner of a portion of such trust as required by this paragraph (c)(2). Instead, if such trust is a foreign trust, the trust shall submit Form W-8IMY to the partnership identifying itself as a grantor trust and shall provide such documentation (e.g., Forms W-8BEN, W-8IMY, or W-9) and information pertaining to its owner(s) to the partnership that permits the partnership to reliably associate (within the meaning of § 1.1441-1(b)(2)(vii)) such portion of the trust's allocable share of partnership ECTI with the grantor or other person that is the owner of such portion of the trust. If such trust is a domestic trust, the trust shall furnish the partnership a statement under penalty of perjury that the trust is, in whole or in part, a grantor trust and identifying that portion of the trust that is treated as owned by a grantor or another person under subpart E of subchapter J of the Internal Revenue Code. The trust shall also provide such documentation and

information (e.g., Forms W-8BEN, W-8IMY, or W-9) pertaining to its owner(s) to the partnership that permits the partnership to reliably associate such portion of the trust's allocable share of partnership ECTI with the grantor or other person that is the owner of such portion of the trust. With respect to nominees, only nominees described in § 1.1446-4(b)(3) holding interests in publicly traded partnerships subject to § 1.1446-4 may submit a Form W-9. See § 1.1446-4 for additional documentation that may be submitted by such a nominee. In all other cases where a nominee holds an interest in a partnership, the beneficial owner of the partnership interest, not the nominee, shall submit Form W-8BEN, Form W-8IMY, or Form W-9. A partnership that has obtained a valid Form W-8BEN, Form W-8IMY, or Form W-9 from a partner, nominee, or beneficial owner prior to the due date for paying any 1446 tax may rely on it to the extent provided in this paragraph (c)(2).

(ii) *Effect of Forms W-8BEN, W-8IMY, W-9, and Statement.* In general, for purposes of this section, a partnership may rely on a valid Form W-8BEN, Form W-8IMY, Form W-9, statement described in § 1.1446-4(e)(1), or statement described in this paragraph (c)(2) from a partner, nominee, beneficial owner, or grantor trust to determine whether that person, beneficial owner, or the owner of a grantor trust, is a domestic or foreign partner or a nominee, and if such person is a foreign partner, to determine whether or not such person is a corporation for U.S. tax purposes. To the extent a partnership receives a Form W-8IMY from a foreign grantor trust or a statement described in this paragraph (c)(2) from a domestic grantor trust, but does not receive a Form W-8BEN, Form W-8IMY, or Form W-9 identifying such grantor or other person, the rules of paragraph (c)(3) of this section shall apply. Further, a partnership may not rely on a Form W-8BEN, Form W-8IMY, Form W-9, or statement described in § 1.1446-4(e)(1) or this paragraph (c)(2), and such form or statement is therefore not valid, if the partnership has actual knowledge or has reason to know that any information on the withholding certificate or statement is incorrect or unreliable and, if based on such knowledge or reason to know, it should pay a 1446 tax in an amount greater than would be the case if it relied on the information or certifications. A partnership has reason to know that information on a withholding certificate or statement is incorrect or unreliable if its knowledge