

of effectively connected taxable income (ECTI), regardless of whether the upper-tier domestic partnership's partners are foreign.

(b) *Reporting requirements*—(1) *In general.* To the extent that an upper-tier partnership that is a foreign partnership is a partner in a lower-tier partnership, and the lower-tier partnership has made 1446 tax installment payments on ECTI allocable to the upper-tier partnership, the upper-tier partnership shall receive a copy of the statements and forms filed by the lower-tier partnership allocable to its partnership interest in the lower-tier partnership under §§ 1.1446–1 through 1.1446–3 (e.g., Form 8805, “Foreign Partner’s Information Statement of Section 1446 Withholding Tax”). The upper-tier partnership may treat the 1446 tax paid by the lower-tier partnership on its behalf as a credit against its liability to pay 1446 tax, as if the upper-tier partnership actually paid over the amounts at the time that the amounts were paid by the lower-tier partnership. See § 1.1462–1(b). However, the upper-tier partnership may not obtain a refund for the amounts paid by the lower-tier partnership, but instead, must file such forms as prescribed by § 1.1446–3 and this section to allow the credits under section 33 to be properly claimed by the beneficial owners of such income. See § 1.1462–1. The upper-tier partnership must file Form 8804, “Annual Return for Partnership Withholding Tax (Section 1446),” and Form 8805, “Foreign Partner’s Information Statement of Section 1446 Withholding Tax,” with respect to its 1446 tax obligation, passing the credit for 1446 tax paid by the lower-tier partnership to its partners.

(2) *Publicly traded partnerships.* In the case of an upper-tier foreign partnership that is a publicly traded partnership, the rules of § 1.1446–4(c) shall apply.

(c) *Look through rules for foreign upper-tier partnerships.* For purposes of computing the 1446 tax obligation of a lower-tier partnership, if an upper-tier partnership owns an interest in the lower-tier partnership, the upper-tier partnership’s allocable share of the lower-tier partnership’s ECTI shall be treated as allocable to the partners of the upper-tier partnership (as if they were direct partners in the lower-tier partnership) to the extent that—

(1) The upper-tier partnership furnishes the lower-tier partnership with a valid Form W–8IMY, “Certificate of Foreign Intermediary, Flow Through Entity, or Certain U.S. Branches for United States Tax Withholding,” indicating that it is a look-through

foreign partnership for purposes of section 1446, and

(2) The lower-tier partnership can reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) the effectively connected partnership items allocable to the upper-tier partnership with a Form W–8BEN, “Certificate of Foreign Status of Beneficial Owner for U.S. Tax Withholding,” Form W–8IMY, or Form W–9, “Request for Taxpayer Identification Number and Certification,” for each of the upper-tier partnership’s partners. The principles of § 1.1441–1(b)(2)(vii) shall apply to determine whether a lower-tier partnership can reliably associate effectively connected partnership items allocable to the upper-tier partnership to the partners of the upper-tier partnership. The upper-tier partnership shall provide the lower-tier partnership with a withholding certificate for each partner in the upper-tier partnership and information regarding the allocation of effectively connected items to the respective partners of the upper-tier partnership. To the extent the lower-tier partnership receives a valid Form W–8IMY from the upper-tier partnership but cannot reliably associate the upper-tier partnership’s allocable share of effectively connected partnership items with a withholding certificate for each of the upper-tier partnership’s partners, the lower-tier partnership shall withhold at the higher of the applicable percentages in section 1446(b). If a lower-tier partnership has not received a valid Form W–8IMY from the upper-tier partnership, the lower-tier partnership shall withhold at the higher of the applicable percentages in section 1446(b). See § 1.1446–1(c)(3). The approach set forth in this paragraph (c) shall not apply to partnerships whose interests are publicly traded. See § 1.1446–4.

(d) *Examples.* The following examples illustrate the provisions of § 1.1446–5:

*Example 1. Sufficient documentation—tiered partnership structure.* (i) Nonresident alien (NRA) and foreign corporation (FC) are partners in PRS, a foreign partnership, and share profits and losses in PRS 70 and 30 percent, respectively. All of PRS’s partnership items are allocated based upon each partner’s respective ownership interest and it is assumed that these allocations are respected under section 704(b) and the regulations thereunder. NRA and FC each furnish PRS with a valid Form W–8BEN establishing themselves as a foreign individual and foreign corporation, respectively. PRS holds a 40 percent interest in the profits, losses and capital of LTP, a lower-tier partnership. NRA holds the remaining 60 percent interest in profits, losses and capital of LTP. LTP has \$100 of annualized ECTI for the relevant installment

period. PRS has no income other than the income allocated from LTP. PRS provides LTP with a valid Form W–8IMY indicating that it is a foreign partnership and attaches the valid Form W–8BENs executed by NRA and FC, as well as a statement describing the allocation of PRS’s effectively connected items among its partners. Further, NRA provides a valid Form W–8BEN to LTP.

(ii) LTP must pay 1446 tax on the \$60 allocable to its direct partner NRA using the highest rate in section 1.

(iii) With respect to the effectively connected partnership items that LTP can reliably associate with NRA through PRS (70 percent of PRS’s allocable share, or \$28), LTP will pay 1446 tax on NRA’s allocable share of LTP’s partnership ECTI (as determined by looking through PRS) using the applicable percentage for non-corporate partners (the highest rate in section 1).

(iv) With respect to the effectively connected partnership items that LTP can reliably associate with FC through PRS (30 percent of PRS’s allocable share, or \$12), LTP will pay 1446 tax on FC’s allocable share of LTP’s ECTI (as determined by looking through PRS) using the applicable percentage for corporate partners.

(v) LTP’s payment of the 1446 tax is treated as a distribution to NRA and PRS, its direct partners, that those partners may credit against their respective tax obligations. PRS will report its 1446 tax obligation with respect to its direct foreign partners, NRA and FC, on the Form 8804 and Form 8805 that it files with the Internal Revenue Service and will credit the amount withheld by LTP. Thus, PRS will pass along to NRA and FC the credit for the 1446 tax withheld by LTP which will be treated as a distribution to them.

*Example 2. Insufficient documentation—tiered partnership structure.* PRS is a domestic partnership that has two equal partners A and UTP. A is a nonresident alien individual and UTP is a foreign partnership that has two equal foreign partners, C and D. Neither A nor UTP provide PRS with a valid Form W–8BEN, Form W–8IMY, or Form W–9. Neither C nor D provide UTP with a valid Form W–8BEN, Form W–8IMY, or Form W–9. PRS must presume that UTP is a foreign person subject to withholding under section 1446 at the higher of the highest rate under section 1 or 11(b)(1). PRS has also not received any documentation with respect to A. PRS must presume that A is a foreign person, and, if PRS knows that A is an individual, compute and pay 1446 tax based on that knowledge.

#### § 1.1446–6 Effective date.

Sections 1.1446–1 through 1.1446–5 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

**Par. 5.** Section 1.1461–1 is amended as follows:

1. Paragraph (a)(1) is amended by adding three sentences at the end of the paragraph.

2. The second sentence of paragraph (c)(1)(i) is removed and two sentences are added in its place.