

Amendment to Final Agreement for Withholding Foreign Partnerships and Withholding Foreign Trusts and Additional Guidance for Qualified Intermediaries under Rev. Proc. 2003-64

Rev. Proc. 2004-21

SECTION 1. PURPOSE AND SCOPE

This revenue procedure modifies the final withholding foreign partnership (“WP”) and withholding foreign trust (“WT”) agreements, contained in Rev. Proc. 2003-64, 2003-32 I.R.B. 306, by expanding the availability of certain simplified documentation, reporting, and withholding procedures. This revenue procedure also makes a conforming change to the portion of the Qualified Intermediary (“QI”) withholding agreement (the “QI agreement”) contained in Rev. Proc. 2003-64.

SECTION 2. BACKGROUND

Rev. Proc. 2003-64 contains the WP and WT agreements described in Treasury Regulation § 1.1441-5(c)(2)(ii) and (e)(5)(v) and sets forth the application procedures for entering into such agreements. Rev. Proc. 2003-64 also amends the QI agreement, contained in Rev. Proc. 2000-12, 2000-1 C.B. 387, to add new Section 4A.

Section 10.01 of the WP and WT agreements and new Section 4A.01 of the QI agreement provide generally that a QI, WP, or WT may apply simplified documentation, reporting, and withholding procedures to a foreign trust or foreign partnership if certain conditions are met (the “Joint Account Provision”). Currently a QI, WP, or WT may apply the Joint Account Provision only if, among other things, the foreign partnership or trust receives from the QI, WP, or WT less than \$200,000 of reportable amounts for a calendar year (the “\$200,000 cap”).

The IRS and Treasury have received comments seeking an expansion of the Joint Account Provision. The comments indicated that expanding the availability of the Joint Account Provision by eliminating the \$200,000 cap would facilitate compliance by QIs, WPs, and WTs with their documentation, reporting, and withholding obligations with respect to foreign partnerships and foreign simple and grantor trusts. After considering these comments, the IRS and Treasury have concluded that expanding the availability of the Joint Account Provision by eliminating the \$200,000 cap would be consistent with the objectives of the underlying reporting and withholding regimes.

SECTION 3. EXPANSION OF JOINT ACCOUNT PROVISION

Appendices 1, 2, and 3 of Rev. Proc. 2003-64, containing the WP and WT agreements and new Section 4A of the QI agreement, respectively, are amended as follows. In Appendices 1 and 2, the first paragraph of Section 10.01 of the WP and WT agreements are amended by inserting “and” before “(iii)” and by deleting “and (iv) the total reportable amounts distributed to, and included in the distributive share of, the partnership or trust for the calendar year do not exceed \$200,000.” In Appendix 3, the first paragraph of Section 4A.01 of the QI agreement is amended by inserting “and” before “(iii)” and by deleting “and (iv) the total reportable amounts that QI has paid to accounts of the partnership or trust that are covered by the QI agreement do not exceed \$200,000 for the calendar year.”

SECTION 4. EFFECTIVE DATE

The modifications to Rev. Proc. 2003-64 made by this revenue procedure are effective as of July 10, 2003, the effective date of Rev. Proc. 2003-64. Pursuant to Section 12.02 of the QI agreement, and Section 11.02 of the WP and WT agreements, these amendments apply to all existing QI, WP, and WT agreements. These amendments will be incorporated into the text of all QI, WP, and WT agreements entered into on or after the date this revenue procedure is released.

As described in section 1.01 of Rev. Proc. 2003-64, a WP or WT agreement entered into during a calendar year may be made effective as of the first day of that calendar year. With the changes made by this revenue procedure, some foreign partnerships and trusts may wish to act as WPs or WTs beginning in 2003. Therefore, upon request, the IRS will execute WP and WT agreements with terms beginning on January 1, 2003, even if the application to enter into a WP or WT agreement was or is received after December 31, 2003, provided that the IRS receives the completed application on or before June 30, 2004.

SECTION 5. REQUEST FOR COMMENTS

Section 4A.02 of the QI agreement and Section 10.02 of the WP and WT agreements allow the QI, WP, or WT to use simplified documentation, reporting, and withholding procedures if, among other things, the QI, WP, or WT is a general partner of the partnership or a trustee of the trust (the “related-party requirement”). The IRS and Treasury are reviewing the related-party requirement and solicit comments as to whether it presents difficulties for taxpayers considering participation in the QI, WP, or WT programs, and, if so, the reasons for such difficulties. Comments also are requested regarding the possibility of eliminating the requirement or modifying it to address any such difficulties, while ensuring consistency with the objectives of the underlying reporting and withholding regimes.

More generally, the IRS and Treasury remain committed to the QI, WP, and WT programs and are continuing to review them to ensure their optimal effectiveness. Therefore, comments are requested regarding additional ways the programs’ current rules and forms of agreement could be improved in a manner that is consistent with the objectives of the underlying reporting and withholding regimes.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2003-64, 2003-32 I.R.B. 306, is modified.

SECTION 7. CONTACT INFORMATION

For further information regarding this revenue procedure, contact Ethan Atticks, Carl Cooper, or Valerie Mark Lippe at (202) 622-3840 (not a toll-free call).