Withholding Requirements for Income Allocated to Foreign Partners (Part I)

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This two-part article explains the computation, and payment and reporting requirements for the Sec. 1446 tax on effectively connected taxable income allocable to foreign partners. Part I explains how to identify foreign partners and calculate the income allocable to them.

Final and temporary regulations issued in 2005[1] contain rules for Sec. 1446 withholding on partnership taxable income from U.S. business operations (i.e., effectively connected taxable income (ECTI)) that is allocated to foreign partners. This two-part article explains the withholding requirements and the procedures for computing and reporting the tax. Part I, below, covers the framework for withholding on U.S. income that is earned by foreign persons, procedures for identifying foreign partners and the calculation of income allocations to them. This article also addresses the special procedures for a foreign partner's income tax rates, business deductions and reduced withholding rate (or exemption from withholding) due to a treaty or other factors.

Part II, in the October 2006 issue, will discuss special withholding procedures for a partnership with effectively connected income (ECI) allocated to a foreign partner that is a partnership (a tiered partnership) and the special withholding rules for publicly traded partnerships. Other matters covered in Part II include the Sec. 1446(d) deemed cash distribution of withheld tax, the partnership's liability for withholding tax, procedural matters related to tax computation and payment, and reports to foreign partners and the IRS.

Background

In 1986, Congress added Sec. 1446, which imposed 20% withholding on distributions to foreign partners. Distributions were presumed to be made first to the extent of passive income subject to withholding under Sec. 1441. Any remaining distributions were subject to withholding under Sec. 1446.

Sec. 1446 caused distributions from partnerships to be subject to withholding even when such distributions were not subject to U.S. tax. Thus, in 1988, Congress amended Sec. 1446 to apply the withholding tax to allocations of ECTI to foreign partners. ECI is income that is "effectively connected" with the operation of a U.S. trade or business; ECTI is "effectively connected taxable income" (i.e., ECI less related expenses).[2]

After the 1986 enactment of Sec. 1446, the main sources of guidance were Rev. Procs. 89-31[3] and 92-66.[4] Final regulations under Sec. 1446 were adopted on May 13, 2005; temporary and proposed regulations were also issued. The regulations explain deductions available to a foreign partner when computing the withholding tax, and exempt a foreign partner from withholding when the annualized tax due therefrom is less than

[1] TD 9200 (5/13/05). The regulations also cover Secs. 871, 1443, 1461, 1462, 1463, 6109 and 6721.
[2] See Sec. 1446(c).
[3] Rev. Proc. 89-31, 1989-1 CB 895.
[4] Rev. Proc. 92-66, 1992-2 CB 428.

$1,000. Thus, the revenue procedures are obsolete for partnership tax years beginning after May 18, 2005. In addition, the regulations were effective on Dec. 31, 2004 for partnerships electing earlier application.[5]

Sec. 1446 withholding is a misnomer, because a partnership pays the tax on behalf of its foreign partners, whether or not it makes any payments or distributions to them. The 2005 regulations recognize this by using the term "1446 tax."

Taxation of Foreign Partners—FDAP and ECTI

The Federal income tax and alternative minimum tax apply to nonresident aliens (NRAs) only as provided in Sec. 871[6] and to foreign corporations only as provided in Sec. 882. A foreign trust or foreign estate is treated as an NRA under Sec. 641(b).

Gross Basis Taxation

Sec. 871(a) imposes a 30% tax[7] on income received by NRAs that consists of fixed or determinable, annual or periodic (FDAP) income (i.e., dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments and other FDAP gains, profits and income). Sec. 881(a) imposes a similar tax on foreign corporations. The tax on FDAP is collected through withholding, generally at 30%, on: (1) NRAs under Sec. 1441, (2) foreign corporations under Sec. 1442 and (3) foreign exempt organizations under Sec. 1443.

With gross basis taxation under Secs. 871(a) and 881(a), no deduction is allowed in ascertaining the base for computing the income tax.[8] Under Regs. Sec. 1.6012-1(b) and -2(g)(2), NRAs and foreign corporations are not required to file Federal income tax returns if they are not engaged in a trade or business in the U.S. and their tax liability is fully satisfied by withholding at source under Chapter 3 of the Code.

Net Basis Taxation

This applies to foreign taxpayers earning income effectively connected with a U.S. trade or business. This taxation scheme is imposed on NRAs by Sec. 871(b) and on foreign corporations by Sec. 882. The tax is fully or substantially paid through withholding at source. The foreign taxpayer has to file a Federal income tax return and compute the tax due or the refund, taking into account deductions allowed by the Code. The foreign partner must pay any remaining balance with the return, and may obtain a refund when the credit for the withholding exceeds the tax liability.[9]

Withholding Requirements

According to Regs. Sec. 1.1446-3(c), certain "passive income" (FDAP income) subject to tax under Sec. 871 or 881 is not subject to withholding under Sec. 1446. Instead, such income is subject to the withholding requirements of Secs. 1441, 1442 and 1443 and the related regulations.

Determining Partners' Status

Identifying Foreign Partners

Regs. Sec. 1.1446-1(a) requires a partnership to determine if it has one or more foreign partners and, if so, whether it has any ECTI allocable under Sec. 704 to any of them. If the answer is yes to both, the partnership computes Sec. 1446 tax, pays it to the IRS and reports the amount paid to its

[5] See Regs. Sec. 1.1446-7.

[6] Secs. 1 and 11 specifically limit taxation of NRAs and foreign corporations. Sec. 877 applies when there is expatriation to avoid U.S. taxes.

[7] Sec. 1441 provides a special 14% withholding rate for certain scholarships paid to foreign persons. Some types of scholarships are exempt from taxation and withholding, while others qualify for special rates or exemption under applicable treaties.

[8] Sec. 873 provides that an NRA can only take deductions connected with ECI. Exceptions are made for charitable contributions, casualty losses and a personal exemption. Sec. 882(b) limits deductions for a foreign corporation to those apportioned or allocated to ECI.

[9] Withholding is required because the IRS does not have another effective means of ensuring that all foreign partners will file U.S. tax returns and pay their taxes.

EXECUTIVE SUMMARY

- **The Sec. 1446 withholding tax applies if the partnership has ECTI allocable to any foreign partner.**
- **Withholding applies regardless of whether any distribution or payments are made to the partner.**
- **Regulations now provide relief in three situations when a partner's withholding tax exceeds the tax liability.**

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Exhibit 1: Withholding certificates described in Regs. Sec. 1.1446-1(c)(2)(ii)(A)

1. Form W-9, Request for Taxpayer Identification Number and Certification, is used to certify that, among other things, the partner is a U.S. person. Withholding under Sec. 1446 is not required on income allocated to a U.S. partner.
2. Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, is used to establish whether withholding is required under Sec. 1441, 1442 or 1446. It is generally submitted by a foreign partner that is an NRA, a foreign corporation or a foreign estate or trust. The form identifies the type of foreign partner (individual, etc.). It may be used to establish a reduced withholding rate, or exemption from withholding, under a treaty; see Regs. Sec. 1.1446-1(c)(2) for more details on these forms, including information about forms to be filed by other entities.
3. A foreign partnership generally provides a Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding, for purposes of Sec. 1446. This form may be used to establish a foreign partnership's responsibility for withholding, payment to the IRS and submission of all required reports to foreign partners and the Service.
4. Documentation for a disregarded entity is submitted by its owner.
5. A partner that is a grantor trust submits documentation to permit the partnership to determine the withholding tax applicable to the grantor.
6. Form W-8ECI, Certificate of Foreign Person's Claim that Income is Effectively Connected with the Conduct of a Trade or Business in the United States, is used to certify that some income received by a foreign partner is ECI from a U.S. trade or business. Such ECI is exempt from withholding under Secs. 1441, 1442 and 1443, but is subject to withholding under Sec. 1446; see Regs. Sec. 1.1446-2(b)(2)(ii). By treating the income as ECI, it is subject to net basis taxation, rather than gross basis taxation.
7. Partnerships can develop substitute forms that may be used as withholding certificates in lieu of the official IRS forms.

foreign partners. Regs. Sec. 1.1446-1(c)(1) recognizes the following types of foreign partners: (1) an NRA, (2) a foreign partnership, (3) a foreign corporation (which may include a foreign government), (4) a foreign estate and (5) a foreign trust.

Withholding Certificates

Exhibit 1 above describes certain IRS forms that function as withholding certificates to be submitted to a partnership for use in identifying foreign partners and determining their classification as corporations, NRAs, etc. Under Regs. Sec. 1.1446-1(c)(2), a withholding certificate is valid only if it (1) is complete, (2) is signed under penalties of perjury and (3) has not expired. A partnership generally must presume that a partner is a foreign person if it does not receive a valid withholding certificate from that person.[10] The same presumption applies if the partnership knows or has reason to know that the information on a form is not accurate. Failure to receive such documentation may prevent the partnership from using the preferential capital gain rates when computing withholding tax on capital gains allocated to a foreign individual, etc.

Computing the ECTI Allocation to Foreign Partners

Generally

Under Regs. Sec. 1.1446-2(a) and (b), the allocation of ECTI to a foreign partner is normally based on the partnership's taxable income computed under Sec. 703. The starting point for computing a foreign partner's allocable share of partnership ECTI is to calculate a foreign partner's distributive share of partnership gross income and gain that is ECI. This gross amount is reduced by the foreign partner's distributive share of deductions connected with such income under Sec. 873(a) or 882(c). Regs. Sec. 1.1446-2(b)(1) requires that the computation take into account basis adjustments under Sec. 743 and special allocations in the partnership agreement respected under Sec. 704.

Only partnership items effectively connected (or treated as effectively connected) with the conduct of a trade or business in the U.S. are considered. Regs. Sec. 1.1446-2(b) provides that ECI includes the following types of income:

1. Income subject to an election by an NRA under Sec. 871(d), or by a foreign corporation under Sec. 882(d) (i.e., the election to treat real property income as income connected with a U.S. business).
2. Income treated as ECI under Sec. 897 (disposition of investment in U.S. real property).
3. Any other income treated as ECI under the Code.

Sec. 864 principles are used to determine whether items of gross income are effectively connected. Income or gain is generally omitted from the computation if it is exempt from U.S. tax. However, income from debt forgiveness is excluded at the partner level, not at the partnership level, so it is subject to withholding under Sec. 1446.[11] Income, gain, loss or deductions allocable to a U.S. partner are not taken into account, unless such partner is an upper-tier partnership (UTP); in that case, the lower-tier partnership can look through to the foreign partners of the UTP.

Special Rules

Under Regs. Sec. 1.1446-2(b), no deduction is allowed in computing a partnership's ECTI for: (1) charitable contributions; (2) personal exemptions; (3) additional itemized deductions normally allowed for individuals; (4) losses on sales or exchanges of capital assets, except to the extent of gains from such sales; or (5) depletion in excess of cost depletion. No deduction is allowed for a net operating loss (NOL) of any for-

[10] A partnership can determine the status of a foreign partner by other means.

[11] See TD 9200, note 1 supra, at Preamble Section B.1.

eign partner, except as provided in Temp. Regs. Sec. 1.1446-6T (discussed later). This also applies to any suspended losses or capital loss carryovers available to a foreign partner. The allocation of interest expense to ECI is determined under Temp. Regs. Sec. 1.861-9T(e)(7) for a noncorporate foreign partner and under Regs. Sec. 1.882-5 for a corporate foreign partner.

Applying the Limits

Example: *P*, a partnership, has two equal partners, *A* and *B*. *A* is an NRA; *B* is a U.S. citizen. *A* provides *P* with a valid Form W-8BEN; *B* provides *P* with a valid Form W-9. *P* has the following annualized tax items for the relevant installment period:

Long-term capital gain: $100
Long-term capital loss: $400
Ordinary income: $300
Ordinary deductions: $100

All of these items are effectively connected with *P*'s U.S. trade or business and are allocated equally to *A* and *B*.

According to Regs. Sec. 1.1446-2(b)(5), *A*'s allocable share of *P*'s effectively connected items includes $50 long-term capital gain, $200 long-term capital loss, $150 ordinary income and $50 ordinary deductions. In determining *A*'s allocable share of *P*'s ECTI, the long-term capital loss taken into account is limited to *A*'s allocable share of gain from the sale or exchange of capital assets. Accordingly, *A*'s share of *P*'s ECTI is $100 ($150 ordinary income − $50 ordinary deductions + $50 capital gain − $50 capital loss).

Partnership-Level Deduction Limits

Under Regs. Sec. 1.1446-2(a), a foreign partner's ECTI allocation is computed at the partnership level in determining the Sec. 1446 tax. A deduction that is not taken into account in calculating a partner's allocable share of partnership ECTI (e.g., percentage depletion), but which is deductible under U.S. tax law, can still be claimed by the foreign partner when computing U.S. tax liability and filing a Federal income tax return (subject to any restriction or limit that may apply).

In computing the Sec. 1446 tax, a partnership can ignore a partner's deductions.

Character of ECI

Under Regs. Sec. 1.1446-2(b)(1), the character of ECI (i.e., capital vs. ordinary) is only considered when applying (1) the capital loss limit (as seen in the above example), (2) Regs. Sec. 1.1446-3(a)(2) (preferential rates when computing the Sec. 1446 tax) and (3) Temp. Regs. Sec. 1.1446-6T (consideration of partner-level deductions and losses to reduce the partnership's Sec. 1446 tax, discussed below). Exhibit 2 on p. 538 outlines the rules described above for computing the ECTI allocation to foreign partners. As shown in the exhibit, the first step is to calculate partnership taxable income under Sec. 703; numerous adjustments are then made to determine ECTI allocated to foreign partners.

Withholding Relief

Exhibit 3 on p. 539 presents information on two cases involving withholding tax in excess of the foreign partner's tax liability. The regulations now provide three types of relief in these situations.[12]

Deductions Available to Partners

A partnership may consider a foreign partner's certification of deductions and losses expected to be available to reduce the partner's Federal income tax liability, when computing the Sec. 1446 tax.[13] The deductions or losses must be related to ECI and can be from another business operation, according to Temp. Regs. Sec. 1.1446-6T(c)(1)(ii). The partnership is not required to take into account the certified deductions in computing the Sec. 1446 tax; it may consider none, some or all of those deductions.[14]

Temp. Regs. Sec. 1.1446-6T(c)(2)(ii) generally requires all deductions and losses listed in the foreign partner's certificate to be reflected on the partner's timely filed (or to-be timely filed) Federal income tax return for the preceding year.[15] This means that no losses or deductions anticipated for the current year may be considered.

Temp. Regs. Sec. 1.1446-6T(e) states that a loss of a foreign partner for a fiscal year cannot be considered in computing a quarterly tax payment by the partnership until after the fiscal year has ended. For example, if a foreign partner had a loss for its fiscal year ending June 30, 2006, the loss can be taken into account only by a calendar-year partnership for tax payments due after June 30, 2006.

A foreign partner's NOL deduction can only offset 90% of the partner's allocable share of ECTI, under Temp. Regs. Sec. 1.1446-6T(c)(1)(iii). If these provisions had been in effect in 2000 and 2001, the ECTI base used for computing the Sec. 1446 tax for Norteamerica (described in Exhibit 3)

[12] Congress stated in the Committee Reports to the Tax Reform Act of 1986 that regulations may provide exceptions to the withholding requirement when withholding is not required to ensure compliance with U.S. tax laws; see S Rep't No. 99-313, 99th Cong., 2d Sess. (1986), 1986-3 CB Vol. 3, p. 414.

[13] The partner-level deductions to be considered do not include charitable contributions. Also, this relief is not available to foreign trusts (other than grantor trusts) because of the complexity of determining the extent to which the trust will be a conduit (i.e., it is difficult to determine which taxpayer (beneficiary) will actually have a tax liability for an ECTI allocation).

[14] See TD 9200, note 1 supra, at Preamble Section G.3.

[15] If a loss was shown on a prior-year Schedule K-1, but not reported on the return because it was suspended, it may be used. Losses and deductions expected to be reported on the return for the current year are not reported on the certificate of deductions and are not taken into account in computing withholding.

Exhibit 2: Computing ECTI

	Part 1: Partnership taxable income				Part 2: ECTI computations		
See note	Subchapter K: Computation of partnership taxable income and separately stated items	Amount (in thousands)	Sec. 703 taxable income	Sec. 702(a) separate items	See note	Amount (in thousands)	
a	Operating revenue	$500	$500		i		$500
a	Operating expenses other than below	(300)	$(300)		i		(300)
b	Short-term capital losses—securities	(30)		$(30)	j	$(30)	
c	Long-term capital gains—securities	20		$20	j	20	
c	Gain on sale of U.S. real property—long-term net capital Loss	3		$3	l	3	
					m	$(7)	0
d	Sec. 1231 gains	8		$8	j		0
e	Charitable contributions	(50)		$(50)	n		0
f, h	Foreign income taxes	(15)			i		0
	Regular depreciation	(200)	$(200)		i		(200)
g	Sec. 179 expense deduction	(100)		$(100)	j		(100)
g	Municipal bond interest income	100	0		o		0
a	Gain on cancellation of debt (COD)	50	$50		p		50
g	Rental income from U.S. property	30		$30	k		30
h	Depletion (cost depletion is $8,000)	(10)			q		8
	Net income/ECTI	$6					$(4)

Note	Sec.	Regs. Sec.	Part 3: Notes for partnership taxable income
a	703(a)		Taxable income is computed in same manner as individual, except:
	703(a)(1)		Separate items in Sec. 702(a) not deducted to arrive at taxable income.
	702(a)		List of separately stated items under Sec. 702(a):
b	702(a)(1)		■ Short-term capital gains
c	702(a)(2)		■ Long-term capital gains
d	702(a)(3)		■ Sec. 1231 gains
e	702(a)(4)		■ Charitable contributions made by partnership
	702(a)(5)		■ Dividend income
f	702(a)(6)		■ Foreign income taxes paid
	702(a)(7)		■ Other items listed in regulations
g		1.702-1(a)(8)	■ Any item that could affect partner's tax, if known
h	703(a)(2)		No deduction for personal exemptions, foreign income taxes, charitable contributions, NOLs, additional itemized deductions or depletion.

Note	Sec.	Regs. Sec.	Part 4: Notes for computing ECTI
i		1.1446-2(a)	ECTI is taxable income computed under Sec. 703, with adjustments found in Sec.1446(c) and Regs. Sec. 1.1446-2.
	1446(c)(3)	1.1446-2(b)(4)(i)	Do not consider any items allocated to a U.S. partner.
		1.1446-2(b)(1)	Take into account special allocations under Sec. 704.
			Take into account basis adjustments under Sec. 743.
j	1446(c)(1)		Sec. 703(a)(1) does not apply—do not separately state items shown in Sec. 702(a) when computing ECTI.
		1.1446-2(b)(2)(i)	Include items of gross income that are ECI under Sec. 864.
k		1.1446-2(b)(2)(ii)	Include items covered by election under Sec. 871(d) or 882(d).
l		1.1446-2(b)(2)(ii)	Include items covered under Sec. 897.
		1.1446-2(b)(2)(ii)	ECI includes other items identified as such in the Code.
		1.1446-2(b)(1)	Deduct expenses related to ECI under Sec. 873(a) or 882(c).
m		1.1446-2(b)(3)(v)	Capital losses are deductible only to extent of capital gains.
n		1.1446-2(b)(3)(ii)	Do not deduct charitable contributions by the partnership.
o		1.1446-2(b)(2)(iii)	Do not include tax-exempt income.
p		TD 9200, Preamble Section B.1	Do not exclude COD income.
q	1446(c)(2)	1.1446-2(b)(3)(i)	Depletion is limited to cost depletion.
		1.1446-2(b)(3)(iii)	Do not deduct NOLs, suspended losses or capital losses for a foreign partner (except when electing Temp. Regs. Sec. 1.1446-6T).
		1.1446-2(b)(3)(iv)	Interest expense allocations: Temp. Regs. Sec. 1.861-9T(e)(7); Regs. Sec. 1.882-5.
		1.1446-2(b)(3)(vi)	Do not claim a personal exemption or additional itemized deductions; see part VIII of Subchapter B.
		1.1446-2(b)(4)(ii)	Do not consider partner's share of partnership credits.
		Temp. Regs. Sec. 1.1446-6T	Elect to consider partner's deductions and losses.

Exhibit 3: Excess withholding cases in comment letters to the IRS

Case 1: Deer Park Refining Limited Partnership has a 50% domestic partner (Shell Oil Company) and a 50% foreign partner (Norteamerica, owned by Mexico's state oil and gas company, PEMEX). The partnership operates a refinery in Deer Park, TX. Between 1993 and 1999, operating losses of $457 million were allocated to Norteamerica. In 2000 and 2001, Norteamerica's share of ECTI was approximately $40 million per year. The partnership had to pay withholding tax of about $14 million per year on behalf of Norteamerica, even though the partner would owe no U.S. income tax because of its NOL carryforward. Norteamerica filed Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, and claimed a refund for the withholding tax for those years.

(Deloitte Comment Letter to IRS, 12/2/03)

Case 2: A limited partnership investing in U.S. real estate is syndicated in Germany, with a U.S. general partner and over 1,000 German limited partners (LPs). Often, one of these LPs has an allocation of ECTI that is less than the exemption amount ($3,300 for 2006). Withholding has been required in such cases; the LPs have filed Form 1040NR, U.S. Nonresident Alien Tax Return, to obtain a full refund of the Sec. 1446 tax withholding. However, not all of the refund checks reached the LPs; those who did receive the checks had to cash them denominated in U.S. dollars.

(Comment Letter to the IRS from Rowbotham & Co., 5/6/04)

could have been reduced by 90%, from about $40 million to about $4 million.

Partner Exemption from Withholding

Under Temp. Regs. Sec. 1.1446-6T(c)(1)(iv), a NRA partner is exempt from withholding under Sec. 1446 if:

1. The annualized Sec. 1446 tax for the partner is expected to be less than $1,000 for the year; and
2. The partner certifies that it does not own any other activity that gives rise to effectively connected income, gain, deduction or loss.

In determining whether the partner's annualized Sec. 1446 tax is less than $1,000, the partnership does not take into account any of the partner's certified deductions or losses. Temp. Regs. Sec. 1.1446-6T(c)(1)(iv) lists the following certificate requirements related to the two forms of relief described:

1. A certificate must be submitted by the foreign partner every year.
2. The foreign partner must certify that it has (or will) timely file its U.S. income tax return for the preceding four years (and has paid, or will pay, all tax shown on such returns).
3. The certificate must be signed under penalty of perjury.

Special Capital Gain Rates

When computing the Sec. 1446 tax, a partnership is permitted to use the highest tax rate applicable to the particular type of income or gain allocable to a foreign partner (e.g., 15% for long-term capital gain allocable to a noncorporate partner, 25% for unrecaptured Sec. 1250 gain and 28% for collectibles gain under Sec. 1(h)). Use of a preferential rate is allowed only if the partnership has documentation indicating that the partner will qualify for it under Regs. Sec. 1.1446-3(a)(2)(ii) (i.e., the foreign partner is an NRA, etc.).

Withholding Tax Limited by Treaty

The U.S. has income tax treaties (or conventions) with some countries, which provide that certain income received by their citizens or residents from within the U.S. is taxed at a reduced rate or is exempt from Federal income taxes. A foreign partner may claim such treaty benefit by providing Form W-8BEN to the withholding partnership, resulting in a reduced withholding rate or exemption from withholding for that partner. This relief may be rare, because treaties often do not provide this preferential treatment for U.S. business profits earned by foreign persons.

Guidelines

The following strategies should be implemented:

1. Consider opportunities for substantial reduction of the Sec. 1446 withholding tax under the regulations, provided adequate documentation is received from foreign partners.
2. Collect and maintain all necessary forms (W-9, W-8BEN, W-8IMY, W-8ECI) and other documentation from foreign partners needed to compute the Sec. 1446 tax.
3. When applicable, collect annually a certificate of losses and deductions available for a foreign partner and/or certification that the partner has no other investment generating ECI.
4. Identify income effectively connected with a U.S. business and related expenses. Use care in allocating ECTI to foreign partners and in computing the Sec. 1446 tax.
5. Compute all withholding tax using the appropriate rates, taking into account: (i) documentation indicating that a treaty provides a reduced withholding rate or an exemption from withholding; (ii) the use of preferential capital gain rates; (iii) the use of losses and deductions available to a partner; and (iv) qualification of a partner for the *de minimis* exemption from withholding. Before using a special withholding rate, confirm that all required documentation has been received.
6. Examine contracts with foreign distributors and other foreign persons to determine whether the contract terms create a partnership for which withholding may be required under Sec. 1446.

Conclusion

Part II, in the October 2006 issue, will cover special withholding procedures for a partnership with ECI allocated to a foreign partner that is a partnership (a tiered partnership), special withholding procedures for publicly traded partnerships, and other matters. **TTA**