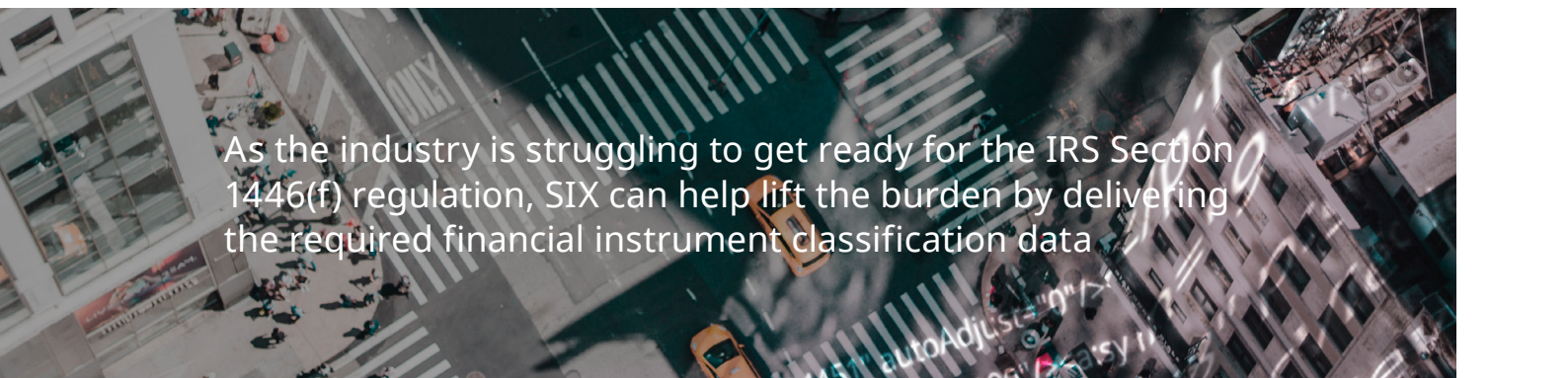


IRS Section 1446(f) on Publicly Traded Partnerships

The Challenges and How to Tackle Them



As the industry is struggling to get ready for the IRS Section 1446(f) regulation, SIX can help lift the burden by delivering the required financial instrument classification data

What is IRS Section 1446(f) and when will it enter into force?

On 30 November 2020, the Department of the Treasury and the Internal Revenue Service (IRS) published final regulations under Section 1446(f) relating to withholding obligations for certain dispositions by foreign partners of interests in partnerships (PTPs).

Under IRS section 1446(f), if the foreign partner has gain on the sale or exchange of a partnership interest, the purchaser/transferee of the partnership interest must withhold 10% of the amount realized on that sale or exchange, unless the transaction qualifies for a full or partial exception.

The IRS Notice 2022-23 on proposed changes to the QI withholding agreement published on 3 May 2022 confirms that the regulation on PTP dispositions will enter into force on 1 January 2023.

What are the main obligations for financial service providers?

According to this new regulation, brokers and/or withholding agents, as well as qualified intermediaries are obliged to withhold a tax of 10% on the disposition on behalf of a foreign partner of interest in a publicly traded partnership.

A "PTP" is a business organization with two or more owners whose shares are regularly traded on a securities

exchange. In principle, the sale of interests in PTPs by non-US persons is taxed at 10% of the realized amount. This applies to all PTPs that are engaged in a US trade or business, meaning that are commercially active in the US and thus generating effectively connected income (ECI).

How else will the IRS Section 1446(f) impact brokers, withholding agents and qualified intermediaries (QIs)?

- Since the PTP status might change dynamically, e.g. depending on whether the partnership is filing a K-1 schedule or whether a partnership declares any ECI, firms need to have a monitoring of legal documents such as prospectus or termsheets in place.
- Furthermore, there are form instructions that specify that for certain investors investing in PTPs, a U.S. tax identification number (TIN) is required.

What are the main challenges of IRS Section 1446(f)?

- Sourcing trusted data to identify potential PTP positions.
- Identifying and confirming which PTP instruments that are in scope of 1446(f).
- Keeping up with PTP updates and regulatory document changes.
- Linking the data back to other US Tax-related data attributes such as US tax reportability and U.S. IRS code attributes.

How can financial services professionals get ready for the regulation?

- The first step is to get a view on potential PTP exposure in clients' portfolios before the regulation enters into force.
- Firms then need to decide whether the potential tax cost impact on non U.S. investors and the additional administrative and reporting requirements are acceptable.
- In order to fulfil their withholding and reporting obligations, brokers, withholding agents and qualified intermediaries need the critical data elements required to comply with IRS Section 1446(f).
- To gain in efficiency, 1446(f) content should ideally be delivered within industry-proven data structures in order to be processed automatically.
- Subsequently, a process for periodically checking the PTP status of instruments needs to be established. SIX recommends to perform such checks at least quarterly.
- For new PTP instruments or corporations opting to be treated as PTPs, the Financial Information Data Operations team from SIX has a constant monitoring and update process in place.

Comply with IRS Section 1446(f) with data from SIX

Following the successful launch of our award-winning IRS Section 871(m) and FATCA data services, SIX has the expertise and global market knowledge to support you in the fulfilment of your withholding and reporting obligations by delivering the data required to comply with IRS Section 1446(f).

Find out more about the data service from SIX:



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