

§ 1.1502-15A

26 CFR Ch. I (4-1-05 Edition)

of foreign source losses. JH has consolidated taxable income of \$700, all of which is United States source. Under paragraph (b)(1)(iii) of this section an additional \$150 from H's separate overall foreign loss is added to the consolidated overall foreign loss account, computed as follows:

Consolidated foreign source taxable income	\$0
Consolidated foreign source taxable income recomputed by excluding H's foreign source income and deductions	- (300)
300.	
× 50%	\$150
Amount from H's separate return limitation year overall foreign loss account added to the consolidated overall foreign loss account	\$150

Thus, an additional \$150 of H's separate overall foreign loss is added to the consolidated overall foreign loss account, and, under paragraph (c)(1)(i)(B) of this section, the same amount is added to J's notional account. While this amount is subject to recapture beginning in the same taxable year, JH has no consolidated foreign source taxable income in 1985, so no overall foreign loss is recaptured. H has a remaining balance of \$150 in its separate return limitation year overall foreign loss account and HJ has \$150 in its consolidated overall foreign loss account.

Example (6). A, B, and C are members of an affiliated group of corporations (as defined in section 1504), and all use the calendar year as their taxable year. For 1986, A, B, and C file a consolidated return. A has an overall foreign loss account which arose in a separate return limitation year. The amount in the overall foreign loss account is \$2,000. A makes a disposition of all its assets to B on January 1, 1986. The gain on the transfer is \$1,500, all of which would be recognized under section 904(f)(3). However, if A adds the total amount of its overall foreign loss from separate return limitation years to ABC's consolidated overall foreign loss account, no gain will be recognized on the transfer until the intercompany gain is taken into account under § 1.1502-13. In the interim, any foreign source gain of the purchasing member (or any other member of the consolidated group) may be used to recapture on a consolidated basis the amount in ABC's consolidated overall foreign loss account.

[T.D. 8153, 52 FR 32005, Aug. 25, 1987; 52 FR 43434, Nov. 12, 1987, as amended by T.D. 8597, 60 FR 36679, July 18, 1995; T.D. 8677, 61 FR 33323, June 27, 1996; T.D. 8766, 63 FR 12643, Mar. 16, 1998; T.D. 8800, 63 FR 71590, Dec. 29, 1998; T.D. 8823, 64 FR 36099, July 2, 1999; Redesignated and amended by T.D. 8833, 64 FR 43615, Aug. 11, 1999; T.D. 8884, 65 FR 33760, May 25, 2000]

REGULATIONS APPLICABLE TO TAXABLE YEARS BEFORE JANUARY 1, 1997

§ 1.1502-15A Limitations on the allowance of built-in deductions for consolidated return years beginning before January 1, 1997.

(a) *Limitation on built-in deductions—*
 (1) *General rule.* Built-in deductions (as defined in subparagraph (2) of this paragraph) for a taxable year shall be subject to the limitation of § 1.1502-21A(c) (determined without regard to such deductions and without regard to net operating loss carryovers to such year) and the limitation of § 1.1502-22A(c) (determined without regard to such deductions and without regard to capital loss carryovers to such year). If as a result of applying such limitations, built-in deductions are not allowable in such consolidated return year, such deductions shall be treated as a net operating loss or net capital loss (as the case may be) sustained in such year and shall be carried to those taxable years (consolidated or separate) to which a consolidated net operating loss or a consolidated net capital loss could be carried under §§ 1.1502-21A, 1.1502-22A and 1.1502-79A, (or §§ 1.1502-21T and 1.1502-22T, as appropriate) except that such losses shall be treated as losses subject to the limitations contained in §§ 1.1502-21T(c) or 1.1502-22T(c) (or §§ 1.1502-21A(c), 1.1502-22A(c), as appropriate), as the case may be. Thus, for example, if member X sells a capital asset during a consolidated return year at a \$1,000 loss and such loss is treated as a built-in deduction, then such loss shall be subject to the limitation contained in § 1.1502-22(c), which, in general, would allow such loss to be offset only against X's own capital gain net income (net capital gain for taxable years beginning before January 1, 1977). Assuming X had no capital gain net income (net capital gain for taxable years beginning before January 1, 1977) reflected in such year (after taking into account its capital losses, other than capital loss carryovers and the built-in deduction), such \$1,000 loss shall be treated as a net capital loss and shall be carried over for 5 years under § 1.1502-22, subject to the limitation contained in § 1.1502-22(c) for consolidated return years.

(2) *Built-in deductions.* (i) For purposes of this paragraph, the term "built-in deductions" for a consolidated return year means those deductions or losses of a corporation which are recognized in such year, or which are recognized in a separate return year and carried over in the form of a net operating or net capital loss to such year, but which are economically accrued in a separate return limitation year (as defined in §1.1502-1(f)). Such term does not include deductions or losses incurred in rehabilitating such corporation. Thus, for example, assume P is the common parent of a group filing consolidated returns on the basis of a calendar year and that P purchases all of the stock of S on December 31, 1966. Assume further that on December 31, 1966, S owns a capital asset with an adjusted basis of \$100 and a fair market value of \$50. If the group files a consolidated return for 1967, and S sells the asset for \$30, \$50 of the \$70 loss is treated as a built-in deduction, since it was economically accrued in a separate return limitation year. If S sells the asset for \$80 instead of \$30, the \$20 loss is treated as a built-in deduction. On the other hand, if such asset is a depreciable asset and is not sold by S, depreciation deductions attributable to the \$50 difference between basis and fair market value are treated as built-in deductions.

(ii) In determining, for purposes of subdivision (i) of this subparagraph, whether a deduction or loss with respect to any asset is economically accrued in a separate return limitation year, the term "predecessor" as used in §1.1502-1(f)(1) shall include any transferor of such asset if the basis of the asset in the hands of the transferee is determined (in whole or in part) by reference to its basis in the hands of such transferor.

(3) *Transitional rule.* If the assets which produced the built-in deductions were acquired (either directly or by acquiring a new member) by the group on or before January 4, 1973, and the separate return limitation year in which such deductions were economically accrued ended before such date, then at the option of the taxpayer, the provisions of this paragraph before amendment by T.D. 7246 shall apply, and, in

addition, if such assets were acquired on or before April 17, 1968, and the separate return limitation year in which the built-in deductions were economically accrued ended on or before such date, then at the option of the taxpayer, the provisions of §1.1502-31A(b)(9) (as contained in the 26 C.F.R. edition revised as of April 1, 1996) shall apply in lieu of this paragraph.

(4) *Exceptions.* (i) Subparagraphs (1), (2), and (3) of this paragraph shall not limit built-in deductions in a taxable year with respect to assets acquired (either directly or by acquiring a new member) by the group if:

(a) The group acquired the assets more than 10 years before the first day of such taxable year, or

(b) Immediately before the group acquired the assets, the aggregate of the adjusted basis of all assets (other than cash, marketable securities, and goodwill) acquired from the transferor or owned by the new member did not exceed the fair market value of all such assets by more than 15 percent.

(ii) For purposes of subdivision (i)(b) of this subparagraph, a security is not a marketable security if immediately before the group acquired the assets:

(a) The fair market value of the security is less than 95 percent of its adjusted basis, or

(b) The transferor or new member had held the security for at least 24 months, or

(c) The security is stock in a corporation at least 50 percent of the fair market value of the outstanding stock of which is owned by the transferor or new member.

(b) *Effective date.* This section applies to any consolidated return years to which §1.1502-21T does not apply. See §1.1502-21T(g) for effective dates of that section.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 6909, 31 FR 16695, Dec. 30, 1966; T.D. 7246, 37 FR 761, Jan. 4, 1972; T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8677, 61 FR 33323, June 27, 1996. Redesignated and amended by T.D. 8677, 61 FR 33326, June 27, 1996]