

2A(d)(3) may elect to have the provisions of §1.1503-2 apply for any open year. In particular, a taxpayer may elect to apply the provisions of §1.1503-2 in a case where the dual consolidated loss has been subjected to the separate return limitation year restrictions of §1.1502-21A(c) or 1.1502-21(c) (as appropriate) but the losses, expenses, or deductions taken into account in computing the dual consolidated loss have not been used to offset the income of another person for foreign tax purposes. However, if a taxpayer is a consolidated group, the election must be made with respect to all dual resident corporations or separate units within the group. Likewise, if the taxpayer is an unaffiliated domestic owner, the election must be made with respect to all separate units of the domestic owner.

[T.D. 8434, 57 FR 41084, Sept. 9, 1992; 57 FR 48722, Oct. 28, 1992; 57 FR 57280, Dec. 3, 1992; 58 FR 13413, Mar. 11, 1993, as amended by T.D. 8597, 60 FR 36680, July 18, 1995; T.D. 8677, 61 FR 33325, June 27, 1996; T.D. 8823, 64 FR 36101, July 2, 1999; T.D. 9084, 68 FR 44617, July 30, 2003; T.D. 9100, 68 FR 70707, Dec. 19, 2003]

§ 1.1503-2T Dual consolidated loss (temporary).

(a) through (g)(1) [Reserved]. For further guidance, see §1.1503-2(a) through (g)(1).

(2) *Elective relief provision*—(i) *In general.* Paragraph (b) of this section shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner elects to be bound by the provisions of §1.1503-2(g)(2) and this paragraph (g)(2). In order to elect relief under §1.1503-2(g)(2) and this paragraph (g)(2), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must attach to its timely filed U.S. income tax return for the taxable year in which the dual consolidated loss is incurred an agreement described in paragraph (g)(2)(i)(A) of this section. The agreement must be signed under penalties of perjury by the person who signs the return. For taxable years beginning after December 31, 2002, the agreement attached to the income tax return of the consolidated group, unaf-

iliated dual resident corporation or unaffiliated domestic owner pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must retain the original in its records in the manner specified by §1.6001-1(e). The agreement must include the following items, in paragraphs labeled to correspond with the items set forth in paragraphs (g)(2)(i)(A) through (F) of this section:

(A) A statement that the document submitted is an election and an agreement under the provisions of §1.1503-2(g)(2) of the Income Tax Regulations.

(B) The name, address, identifying number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located.

(C) An agreement by the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner to comply with all of the provisions of paragraphs (g)(2)(iii) through (vii) of §1.1503-2 and this section.

(D) A statement of the amount of the dual consolidated loss covered by the agreement.

(E) A certification that no portion of the dual resident corporation's or separate unit's losses, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country.

(F) A certification that arrangements have been made to ensure that no portion of the dual consolidated loss will be used to offset the income of another person under the laws of a foreign country and that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will be informed of any such foreign use of any portion of the dual consolidated loss.

(g)(2)(ii) through (iv)(B)(3)(ii) [Reserved] For further guidance, see § 1.1503-2(g)(2)(ii) through (iv)(B)(3)(ii).

(g)(2)(iv)(B)(3)(iii) The unaffiliated domestic corporation or new consolidated group must file, with its timely filed income tax return for the taxable year in which the event described in § 1.1503-2(g)(2)(iv)(B)(1) or (2) occurs, an agreement described in paragraph (g)(2)(i) of this section (new (g)(2)(i) agreement), whereby it assumes the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original (g)(2)(i) agreement with respect to that loss. The new (g)(2)(i) agreement must be signed under penalties of perjury by the person who signs the return and must include a reference to § 1.1503-2(g)(2)(iv)(B)(3)(iii) or this paragraph (g)(2)(iv)(B)(3)(iii). For taxable years beginning after December 31, 2002, the agreement attached to the return pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the corporation or consolidated group must retain the original in its records in the manner specified by § 1.6001-1(e).

(g)(2)(iv)(C) through (vi)(A) [Reserved]. For further guidance, see § 1.1503-2(g)(2)(iv)(C) through (vi)(A).

(B) *Annual certification.* Except as provided in § 1.1503-2(g)(2)(vi)(C), until and unless Form 1120 or the Schedules thereto contain questions pertaining to dual consolidated losses, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the 15 taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. For taxable years beginning before January 1, 2003, the annual certification must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (g)(2)(i) of this section. For taxable years beginning after December 31, 2002, the certification is verified by signing the return with which the cer-

tification is filed. The certification for a taxable year must identify the dual consolidated loss to which it pertains by setting forth the taxpayer's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g)(2)(vi)(B), the certifications for those years may be combined in a single document but each dual consolidated loss must be separately identified.

(g)(2)(vii) through (h) [Reserved]. For further guidance, see § 1.1503-2(g)(2)(vi) through (h).

[T.D. 9100, 68 FR 70707, Dec. 19, 2003]

§ 1.1504-0 Outline of provisions.

In order to facilitate the use of §§ 1.1504-1 through 1.1504-4, this section lists the captions contained in §§ 1.1504-1 through 1.1504-4.

§ 1.1504-1 Definitions.

§ 1.1504-2 [Reserved]

§ 1.1504-3 [Reserved]

§ 1.1504-4 Treatment of warrants, options, convertible obligations, and other similar interests.

- (a) Introduction.
 - (1) General rule.
 - (2) Exceptions.
- (b) Options not treated as stock or as exercised.
 - (1) General rule.
 - (2) Options treated as exercised.
 - (i) In general.
 - (ii) Aggregation of options.
 - (iii) Effect of treating option as exercised.
 - (A) In general.
 - (B) Cash settlement options, phantom stock, stock appreciation rights, or similar interests.
 - (iv) Valuation.
 - (3) Example.
- (c) Definitions.
 - (1) Issuing corporation.
 - (2) Related or sequential option.
 - (3) Related persons.
 - (4) Measurement date.
 - (i) General rule.
 - (ii) Issuances, transfers, or adjustments not treated as measurement dates.