

unused foreign taxes that are carried forward shall be treated as allocable to general limitation income to the extent that such taxes would otherwise have been allocable to passive income, either on a look-through basis or as a result of inadequate substantiation under the rules of § 1.904-7(f)(4).

(2) *Carryback of unused foreign tax.* The rules of this paragraph (h)(2) apply to any unused foreign taxes that were paid or accrued or deemed paid under section 902 with respect to a dividend from a noncontrolled section 902 corporation paid in a taxable year of the noncontrolled section 902 corporation ending on or after April 20, 2009, which dividends were eligible for look-through treatment. See 26 CFR § 1.904-2T(h)(2) (revised as of April 1, 2009) for rules applicable to such unused foreign taxes with respect to a dividend from a noncontrolled section 902 corporation paid in a taxable year of the noncontrolled section 902 corporation beginning after December 31, 2002 and ending before April 20, 2009, which dividends were eligible for look-through treatment. To the extent any such unused foreign taxes are carried back to a prior taxable year of a domestic shareholder, a credit for such taxes shall be allowed only to the extent of the excess limitation in the same separate category or categories to which the related look-through dividend was assigned and not in any separate category for dividends from noncontrolled section 902 corporations.

(i) [Reserved] For further guidance, see § 1.904-2T(i).

[T.D. 6789, 29 FR 19244, Dec. 31, 1964, as amended by T.D. 7294, 38 FR 33081, Nov. 30, 1973; T.D. 7292, 38 FR 33292, Dec. 3, 1973; T.D. 7490, 42 FR 30497, June 15, 1977; T.D. 7961, 49 FR 26225, June 27, 1984; 49 FR 29594, July 23, 1984; T.D. 9260, 71 FR 24529, Apr. 25, 2006; T.D. 9368, 72 FR 72587, Dec. 21, 2007; T.D. 9452, 74 FR 27877, June 11, 2009]

**§ 1.904-2T Carryback and carryover of unused foreign tax (temporary).**

(a) through (h) [Reserved] For further guidance, see § 1.904-2(a) through (h).

(i) *Transition rules for carryovers and carrybacks of pre-2007 and post-2006 unused foreign tax—(1) Carryover of unused foreign tax—(i) General rule.* For purposes of this paragraph (i), the terms *post-2006 separate category* and *pre-2007*

*separate category* have the meanings set forth in § 1.904-7T(g)(1)(ii) and (iii). The rules of this paragraph (i)(1) apply to reallocate to the taxpayer's post-2006 separate categories for general category income and passive category income any unused foreign taxes (as defined in § 1.904-2(b)(2)) that were paid or accrued or deemed paid under section 902 with respect to income in a pre-2007 separate category (other than a category described in § 1.904-4(m)). To the extent any such unused foreign taxes are carried forward to a taxable year beginning after December 31, 2006, such taxes shall be allocated to the taxpayer's post-2006 separate categories to which those taxes would have been allocated if the taxes were paid or accrued in a taxable year beginning after December 31, 2006. For example, any foreign taxes paid or accrued or deemed paid with respect to financial services income in a taxable year beginning before January 1, 2007, that are carried forward to a taxable year beginning after December 31, 2006, will be allocated to the general category because the financial services income to which those taxes relate would have been allocated to the general category if it had been earned in a taxable year beginning after December 31, 2006.

(ii) *Safe harbor.* In lieu of applying the rules of paragraph (i)(1)(i) of this section, a taxpayer may allocate all unused foreign taxes in the pre-2007 separate category for passive income to the post-2006 separate category for passive category income, and allocate all other unused foreign taxes described in paragraph (i)(1)(i) of this section to the post-2006 separate category for general category income.

(2) *Carryback of unused foreign tax—(i) General rule.* The rules of this paragraph (i)(2) apply to any unused foreign taxes that were paid or accrued or deemed paid under section 902 with respect to income in a post-2006 separate category (other than a category described in § 1.904-4(m)). To the extent any such unused foreign taxes are carried back to a taxable year beginning before January 1, 2007, a credit for such taxes shall be allowed only to the extent of the excess limitation in the pre-2007 separate category, or categories,

to which the taxes would have been allocated if the taxes were paid or accrued in a taxable year beginning before January 1, 2007. For example, any foreign taxes paid or accrued or deemed paid with respect to income in the general category in a taxable year beginning after December 31, 2006, that are carried back to a taxable year beginning before January 1, 2007, will be allocated to the same separate categories to which the income would have been allocated if it had been earned in a taxable year beginning before January 1, 2007.

(ii) *Safe harbor.* In lieu of applying the rules of paragraph (i)(2)(i) of this section, a taxpayer may allocate all unused foreign taxes in the post-2006 separate category for passive category income to the pre-2007 separate category for passive income, and may allocate all other unused foreign taxes described in paragraph (i)(2)(i) of this section to the pre-2007 separate category for general limitation income.

(3) *Effective/applicability date.* This paragraph (i) applies to taxable years of United States taxpayers beginning after December 31, 2006 and ending on or after December 21, 2007.

(4) *Expiration date.* The applicability of this paragraph (i) expires on December 20, 2010.

[T.D. 9260, 71 FR 24529, Apr. 25, 2006, as amended by T.D. 9368, 72 FR 72587, Dec. 21, 2007; T.D. 9452, 74 FR 27878, June 11, 2009]

**§ 1.904-3 Carryback and carryover of unused foreign tax by husband and wife.**

(a) *In General.* This section provides rules, in addition to those prescribed in § 1.904-2, for the carryback and carryover of the unused foreign tax paid or accrued to a foreign country or possession by a husband and wife making a joint return for one or more of the taxable years involved in the computation of the carryback or carryover.

(b) *Joint unused foreign tax and joint excess limitation.* In the case of a husband and wife the joint unused foreign tax or the joint excess limitation for a taxable year for which a joint return is made shall be computed on the basis of the combined income, deductions, taxes, and credit of both spouses as if the combined income, deductions,

taxes, and credit were those of one individual.

(c) *Continuous use of joint return.* If a husband and wife make a joint return for the current taxable year, and also make joint returns for each of the other taxable years involved in the computation of the carryback or carryover of the unused foreign tax to the current taxable year, the joint carryback or the joint carryover to the current taxable year shall be computed on the basis of the joint unused foreign tax and the joint excess limitations.

(d) *From separate to joint return.* If a husband and wife make a joint return for the current taxable year, but make separate returns for all of the other taxable years involved in the computation of the carryback or carryover of the unused foreign tax to the current taxable year, the separate carrybacks or separate carryovers shall be a joint carryback or a joint carryover to the current taxable year. If for such current year the per-country limitation applies, then only the unused foreign tax for a taxable year of a spouse for which the per-country limitation applied to such spouse may constitute a carryover or carryback to the current taxable year. If for such current taxable year the overall limitation applies, then only the unused foreign tax for a taxable year of a spouse for which the overall limitation applied to such spouse may constitute a carryover or carryback to the current taxable year.

(e) *Amounts carried from or through a joint return year to or through a separate return year.* It is necessary to allocate to each spouse his share of an unused foreign tax or excess limitation for any taxable year for which the spouses filed a joint return if—

(1) The husband and wife file separate returns for the current taxable year and an unused foreign tax is carried thereto from a taxable year for which they filed a joint return;

(2) The husband and wife file separate returns for the current taxable year and an unused foreign tax is carried to such taxable year from a year for which they filed separate returns but is first carried through a year for which they filed a joint return; or

(3) The husband and wife file a joint return for the current taxable year and