

§ 1.904(f)-12T

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any unused foreign taxes in such separate category to any other limitation category. However, a taxpayer may elect to recapture the balances of all separate limitation loss and overall foreign loss accounts for all separate categories for dividends from such formerly-owned noncontrolled section 902 corporations under the rules of paragraphs (g)(1) and (2) of this section. If a taxpayer so elects, it may carry over any unused foreign taxes in these separate categories to the appropriate separate categories as provided in § 1.904-2(h).

(4) *Examples.* The following examples illustrate the application of this paragraph (g):

Example 1. X is a domestic corporation that meets the ownership requirements of section 902(a) with respect to Y, a foreign corporation the stock of which X owns 50 percent. Therefore, Y is a noncontrolled section 902 corporation with respect to X. Both X and Y use the calendar year as their taxable year. As of December 31, 2002, X had a \$100 balance in its separate limitation loss account for the separate category for dividends from Y, of which \$60 offset general limitation income and \$40 offset passive income. For purposes of apportioning X's interest expense for its 2003 taxable year, X properly characterized the stock of Y as a multiple category asset (80% general and 20% passive). Under paragraph (g)(1) of this section, on January 1, 2003, \$80 ($\$100 \times 80/100$) of the \$100 balance in the separate limitation loss account is assigned to the general limitation category. Of this \$80 balance, \$32 ($\$80 \times 40/100$) is with respect to the passive category, and \$48 ($\$80 \times 60/100$) is with respect to the general limitation category and therefore is eliminated. The remaining \$20 balance ($\$100 \times 20/100$) of the \$100 balance is assigned to the passive category. Of this \$20 balance, \$12 ($\$20 \times 60/100$) is with respect to the general limitation category, and \$8 ($\$20 \times 40/100$) is with respect to the passive category and therefore is eliminated.

Example 2. The facts are the same as in *Example 1*, except that as of December 31, 2002, X had a \$30 balance in its separate limitation loss account in the general limitation category, and a \$20 balance in its separate limitation loss account in the passive category, both of which offset income in the separate category for dividends from Y. Under paragraph (g)(2) of this section, the separate limitation loss accounts in the general limitation and passive categories with respect to the separate category for dividends from Y will be recaptured on and after January 1, 2003, from income in other separate categories, as follows. Of the \$30 balance in X's

separate limitation loss account in the general category with respect to the separate category for dividends from Y, \$6 ($\$30 \times 20/100$) is with respect to the passive category, and \$24 ($\$30 \times 80/100$) is with respect to the general limitation category and therefore is eliminated. Of the \$20 balance in X's separate limitation loss account in the passive category with respect to the separate category for dividends from Y, \$16 ($\$20 \times 80/100$) will be recaptured out of general limitation income, and \$4 ($\$20 \times 20/100$) would otherwise be recaptured out of passive income and therefore is eliminated.

(5) *Effective/applicability date.* This paragraph (g) applies to taxable years ending on or after April 20, 2009. See 26 CFR 1.904(f)-12T(g) (revised as of April 1, 2009) for rules applicable to taxable years beginning after December 31, 2002, and ending before April 20, 2009.

(h) [Reserved] For further guidance, see § 1.904(f)-12T(h).

[T.D. 8306, 55 FR 31381, Aug. 2, 1990, as amended by T.D. 9260, 71 FR 24539, Apr. 25, 2006; T.D. 9368, 72 FR 72591, Dec. 21, 2007; T.D. 9452, 74 FR 27886, June 11, 2009]

§ 1.904(f)-12T Transition rules (temporary).

(a) through (g) [Reserved] For further guidance, see § 1.904(f)-12(a) through (g).

(h) *Recapture in years beginning after December 31, 2006, of separate limitation losses and overall foreign losses incurred in years beginning before January 1, 2007—(1) Losses related to pre-2007 separate categories for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC—(i) Recapture of separate limitation loss or overall foreign loss incurred in a pre-2007 separate category for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC.* To the extent that a taxpayer has a balance in any separate limitation loss or overall foreign loss account in a pre-2007 separate category (as defined in § 1.904-7T(g)(1)(ii)) for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC, at the end of the taxpayer's last taxable year beginning before January 1, 2007, the

amount of such balance, or balances, shall be allocated on the first day of the taxpayer's next taxable year to the taxpayer's post-2006 separate category (as defined in §1.904-7T(g)(1)(iii)) for passive category income.

(ii) *Recapture of separate limitation loss with respect to a pre-2007 separate category for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC.* To the extent that a taxpayer has a balance in any separate limitation loss account in any pre-2007 separate category with respect to a pre-2007 separate category for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC at the end of the taxpayer's last taxable year beginning before January 1, 2007, such loss shall be recaptured in subsequent taxable years as income in the post-2006 separate category for passive category income.

(2) *Losses related to pre-2007 separate categories for shipping, financial services income or general limitation income—(i) Recapture of separate limitation loss or overall foreign loss incurred in a pre-2007 separate category for shipping income, financial services income or general limitation income.* To the extent that a taxpayer has a balance in any separate limitation loss or overall foreign loss account in a pre-2007 separate category for shipping income, financial services income or general limitation income at the end of the taxpayer's last taxable year beginning before January 1, 2007, the amount of such balance, or balances, shall be allocated on the first day of the taxpayer's next taxable year to the taxpayer's post-2006 separate category for general category income.

(ii) *Recapture of separate limitation loss with respect to a pre-2007 separate category for shipping income, financial services income or general limitation income.* To the extent that a taxpayer has a balance in any separate limitation loss account in any pre-2007 separate category with respect to a pre-2007 separate category for shipping income, financial services income or general limitation income at the end of the taxpayer's last taxable year beginning be-

fore January 1, 2007, such loss shall be recaptured in subsequent taxable years as income in the post-2006 separate category for general category income.

(3) *Losses related to a pre-2007 separate category for high withholding tax interest—(i) Recapture of separate limitation loss or overall foreign loss incurred in a pre-2007 separate category for high withholding tax interest.* To the extent that a taxpayer has a balance in any separate limitation loss or overall foreign loss account in a pre-2007 separate category for high withholding tax interest at the end of the taxpayer's last taxable year beginning before January 1, 2007, the amount of such balance shall be allocated on the first day of the taxpayer's next taxable year on a pro rata basis to the taxpayer's post-2006 separate categories for general category and passive category income, based on the proportion in which any unused foreign taxes in the same pre-2007 separate category for high withholding tax interest are allocated under §1.904-2T(i)(1). If the taxpayer has no unused foreign taxes in the pre-2007 separate category for high withholding tax interest, then any loss account balance in that category shall be allocated to the post-2006 separate category for passive category income.

(ii) *Recapture of separate limitation loss with respect to a pre-2007 separate category for high withholding tax interest.* To the extent that a taxpayer has a balance in a separate limitation loss account in any pre-2007 separate category with respect to a pre-2007 separate category for high withholding tax interest at the end of the taxpayer's last taxable year beginning before January 1, 2007, such loss shall be recaptured in subsequent taxable years on a pro rata basis as income in the post-2006 separate categories for general category and passive category income, based on the proportion in which any unused foreign taxes in the pre-2007 separate category for high withholding tax interest are allocated under §1.904-2T(i)(1). If the taxpayer has no unused foreign taxes in the pre-2007 separate category for high withholding tax interest, then the loss account balance shall be recaptured in subsequent taxable years solely as income in the post-

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2006 separate category for passive category income.

(4) *Elimination of certain separate limitation loss accounts.* After application of paragraphs (h)(1) through (h)(3) of this section, any separate limitation loss account allocated to the post-2006 separate category for passive category income for which income is to be recaptured as passive category income, as determined under those same provisions, shall be eliminated. Similarly, after application of paragraphs (h)(1) through (h)(3) of this section, any separate limitation loss account allocated to the post-2006 separate category for general category income for which income is to be recaptured as general category income, as determined under those same provisions, shall be eliminated.

(5) *Alternative method.* In lieu of applying the rules of paragraphs (h)(1) through (h)(3) of this section, a taxpayer may apply the principles of paragraphs (g)(1) and (g)(2) of this section to determine recapture in taxable years beginning after December 31, 2006, of separate limitation losses and overall foreign losses incurred in taxable years beginning before January 1, 2007.

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

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

[T.D. 9260, 71 FR 24533, Apr. 25, 2006; 71 FR 77265, Dec. 26, 2006, as amended by T.D. 9368, 72 FR 72591, Dec. 21, 2007; T.D. 9452, 74 FR 27887, June 11, 2009]

§ 1.904(g)-0 Outline of regulation provisions.

This section lists the headings for §§ 1.904(g)-1 through 1.904(g)-3.

§ 1.904(g)-1 Overall domestic loss and the overall domestic loss account.

[Reserved] For further guidance, see the entries for § 1.904(g)-1T in § 1.904(g)-0T.

§ 1.904(g)-2 Recapture of overall domestic losses.

[Reserved] For further guidance, see the entries for § 1.904(g)-2T in § 1.904(g)-0T.

§ 1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses. [Reserved] For further guidance, see the entries for § 1.904(g)-3T in § 1.904(g)-0T.

[T.D. 9371, 72 FR 72599, Dec. 21, 2007]

§ 1.904(g)-0T Outline of regulation provisions (temporary).

This section lists the headings for §§ 1.904(g)-1T through 1.904(g)-3T.

§ 1.904(g)-1T Overall domestic loss and the overall domestic loss account (temporary).

- (a) Overview of regulations.
- (b) Overall domestic loss accounts.
 - (1) In general.
 - (2) Taxable year in which overall domestic loss is sustained.
 - (c) Determination of a taxpayer's overall domestic loss.
 - (1) Overall domestic loss defined.
 - (2) Domestic loss defined.
 - (3) Qualified taxable year defined.
 - (4) Method of allocation and apportionment of deductions.
 - (d) Additions to overall domestic loss accounts.
 - (1) General rule.
 - (2) Overall domestic loss of another taxpayer.
 - (3) Adjustments for capital gains and losses.
 - (e) Reductions of overall domestic loss accounts.
 - (1) Pre-recapture reduction for amounts allocated to other taxpayers.
 - (2) Reduction for amounts recaptured.
 - (f) Effective/applicability date.
 - (g) Expiration date.

§ 1.904(g)-2T Recapture of overall domestic losses (temporary).

- (a) In general.
- (b) Determination of U.S. source taxable income for purposes of recapture.
- (c) Section 904(g)(1) recapture.
- (d) Effective/applicability date.
- (e) Expiration date.

§ 1.904(g)-3T Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses (temporary).

- (a) In general.
- (b) Step One: Allocation of net operating loss and net capital loss carryovers.
 - (1) In general.
 - (2) Full net operating loss carryover.
 - (3) Partial net operating loss carryover.