

§ 1.904(f)-0T

(c) Treatment of overall foreign losses that are part of net operating losses incurred in post-effective date taxable years which are carried back to pre-effective date taxable years.

(1) Allocation to analogous income category.

(2) Allocation to U.S. source income.

(3) Allocation to other separate limitation categories.

(4) Examples.

(d) Recapture of FORI and general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983.

(e) Recapture of pre-1983 overall foreign losses determined on a combined basis.

(f) Transition rules for taxable years beginning before December 31, 1990.

(g) Recapture in years beginning after December 31, 2002, of separate limitation losses and overall foreign losses incurred in years beginning before January 1, 2003, with respect to the separate category for dividends from a noncontrolled section 902 corporation.

(1) Recapture of separate limitation loss or overall foreign loss in a separate category for dividends from a noncontrolled section 902 corporation.

(2) Recapture of separate limitation loss in another separate category.

(3) Exception.

(4) Examples.

(5) Effective/applicability date.

(h) [Reserved]

[T.D. 9371, 72 FR 72596, Dec. 21, 2007; T.D. 9452, 74 FR 27886, June 11, 2009]

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

This section lists the headings for §§ 1.904(f)-1T, 1.904(f)-2T, 1.904(f)-7T and 1.904(f)-8T.

§ 1.904(f)-1T Overall foreign loss and the overall foreign loss account (temporary).

(a)(1) [Reserved] For further guidance, see the entry for § 1.904(f)-1(a)(1) in § 1.904(f)-0.

(2) Application to post-1986 taxable years.

(b) through (d)(3) [Reserved] For further guidance, see the entries for § 1.904(f)-1(b) through (d)(3) in § 1.904(f)-0.

(d)(4) Adjustments for capital gains and losses.

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

(g) Effective/applicability date.

(h) Expiration date.

§ 1.904(f)-2T Recapture of overall foreign loss (temporary).

(a) and (b) [Reserved] For further guidance, see the entries for § 1.904(f)-2(a) and (b) in § 1.904(f)-0.

(c) Section 904(f)(1) recapture.

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(1) In general.

(c)(2) through (d) [Reserved] For further guidance, see the entries for § 1.904(f)-2(c)(2) through (d) in § 1.904(f)-0.

(e) Effective/applicability date.

(f) Expiration date.

§ 1.904(f)-7T Separate limitation loss and the separate limitation loss account (temporary).

(a) Overview of regulations.

(b) Definitions.

(1) Separate category.

(2) Separate limitation income.

(3) Separate limitation loss.

(c) Separate limitation loss account.

(d) Additions to separate limitation loss accounts.

(1) General rule.

(2) Separate limitation losses of another taxpayer.

(3) Additions to separate limitation loss account created by loss carryovers.

(e) Reductions of separate limitation loss accounts.

(1) Pre-recapture reduction for amounts allocated to other taxpayers.

(2) Reduction for offsetting loss accounts.

(3) Reduction for amounts recaptured.

(f) Effective/applicability date.

(g) Expiration date.

§ 1.904(f)-8T Recapture of separate limitation loss accounts (temporary).

(a) In general.

(b) Effect of recharacterization of separate limitation income on associated taxes.

(c) Effective/applicability date.

(d) Expiration date.

[T.D. 9371, 72 FR 72596, Dec. 21, 2007]

§ 1.904(f)-1 Overall foreign loss and the overall foreign loss account.

(a)(1) *Overview of regulations.* In general, section 904(f) and these regulations apply to any taxpayer that sustains an overall foreign loss (as defined in paragraph (c)(1) of this section) in a taxable year beginning after December 31, 1975. For taxable years ending after December 31, 1984, and beginning before January 1, 1987, there can be five types of overall foreign losses: a loss under each of the five separate limitations contained in former section 904(d)(1)(A) (passive interest limitation), (d)(1)(B) (DISC dividend limitation), (d)(1)(C) (foreign trade income limitation), (d)(1)(D) (foreign sales corporation (FSC) distributions limitation), and (d)(1)(E) (general limitation). For taxable years beginning after December 31, 1982, and ending before January 1, 1985,

there can be three types of overall foreign losses under former section 904(d)(1)(A) (passive interest limitation), former section 904(d)(1)(B) (DISC dividend limitation) and former section 904(d)(1)(C) (general limitation). For taxpayers subject to section 907, the post-1982 general limitation overall foreign loss account may be further subdivided, as provided in § 1.904(f)-6. For taxable years beginning after December 31, 1975, and before January 1, 1983, taxpayers should have computed overall foreign losses separately under the passive interest limitation, the DISC dividend limitation, the general limitation, and the section 907(b) (FORI) limitation. However, for taxable years beginning after December 31, 1975, and before January 1, 1983, taxpayers may have computed only two types of overall foreign losses: A foreign oil related loss under the FORI limitation and an overall foreign loss computed on a combined basis for the passive interest limitation, the DISC dividend limitation, and the general limitation. A taxpayer that computed overall foreign losses for these years on a combined basis will not be required to amend its return to recompute such losses on a separate basis. If a taxpayer computed its overall foreign losses for these years separately under the passive interest limitation, the DISC dividend limitation, and the general limitation, on returns previously filed, a taxpayer may not amend those returns to compute such overall foreign losses on a combined basis. Section 1.904(f)-1 provides rules for determining a taxpayer's overall foreign losses, for establishing overall foreign loss accounts, and for making additions to and reductions of such accounts for purposes of section 904(f). Section 1.904(f)-2 provides rules for recapturing the balance in any overall foreign loss account under the general recapture rule of section 904(f)(1) and under the special recapture rule of section 904(f)(3) when the taxpayer disposes of property used predominantly outside the United States in a trade or business. Section 1.904(f)-3 provides rules for allocating overall foreign losses that are part of net operating losses or net capital losses to foreign source income in years to which such losses are carried.

In addition, § 1.904(f)-3 provides transition rules for the treatment of net operating losses incurred in taxable years beginning after December 31, 1982, and carried back to taxable years beginning before January 1, 1983, and of net operating losses incurred in taxable years beginning before January 1, 1983, and carried forward to taxable years beginning after December 31, 1982. Section 1.904(f)-4 provides rules for recapture out of an accumulation distribution of a foreign trust. Section 1.904(f)-5 provides rules for recapture of overall foreign losses of domestic trusts. Section 1.904(f)-6 provides a transition rule for recapturing a taxpayer's pre-1983 overall foreign losses under the general limitation and the FORI limitation out of taxable income subject to the general limitation in taxable years beginning after December 31, 1982. Section 1.1502-9 provides rules concerning the application of these regulations to corporations filing consolidated returns.

(2) [Reserved] For further guidance, see § 1.904(f)-1T(a)(2).

(b) *Overall foreign loss accounts.* Any taxpayer that sustains an overall foreign loss under paragraph (c) of this section must establish an account for such loss. Separate types of overall foreign losses must be kept in separate accounts. For taxable years beginning prior to January 1, 1983, taxpayers that computed losses on a combined basis in accordance with § 1.904(f)-1(c)(1) will keep one overall foreign loss account for such overall foreign loss. The balance in each overall foreign loss account represents the amount of such overall foreign loss subject to recapture by the taxpayer in a given year. From year to year, amounts may be added to or subtracted from the balances in such accounts as provided in paragraphs (d) and (e) of this section. The taxpayer must report the balances (if any) in its overall foreign loss accounts annually on a Form 1116 or 1118. Such forms must be filed for each taxable year ending after September 24, 1987. The balance in each account does not have to be attributed to the year or years in which the loss was incurred.

(c) *Determination of a taxpayer's overall foreign loss*—(1) *Overall foreign loss defined.* For taxable years beginning

after December 31, 1982, and before January 1, 1987, a taxpayer sustains an overall foreign loss in any taxable year in which its gross income from sources without the United States subject to a separate limitation (as defined in paragraph (c)(2) of this section) is exceeded by the sum of the deductions properly allocated and apportioned thereto. Such losses are to be determined separately in accordance with the principles of the separate limitations. Accordingly, income and deductions subject to a separate limitation are not to be netted with income and deductions subject to another separate limitation for purposes of determining the amount of an overall foreign loss. A taxpayer may, for example, have an overall foreign loss under the general limitation in the same taxable year in which it has taxable income under the DISC dividend limitation. The same principles of calculating overall foreign losses on a separate limitation basis apply for taxable years beginning before January 1, 1983, except that a taxpayer shall determine its overall foreign losses on a combined basis, except for income subject to the FORI limitation, if the taxpayer filed its pre-1983 returns on such basis. Thus, for taxable years beginning prior to January 1, 1983, a taxpayer can net income and losses among the passive interest limitation, the DISC dividend limitation, and the general limitation if the taxpayer calculated its overall foreign losses that way at the time. Taxpayers that computed overall foreign losses separately under each of the separate limitations on their returns filed for taxable years beginning prior to January 1, 1983, may not amend such returns to compute their overall foreign losses for pre-1983 years on a combined basis.

(2) *Separate limitation defined.* For purposes of paragraph (c)(1) of this section and these regulations, the term separate limitation means any of the separate limitations under former section 904(d)(1)(A) (passive interest limitation), (B) (DISC dividend limitation), (C) (foreign trade income limitation), (D) (FSC distributions limitation), and (E) (general limitation) and the separate limitation under section 907(b) (FORI limitation) (for taxable years

ending after December 31, 1975, and beginning before January 1, 1983).

(3) *Method of allocation and apportionment of deductions.* In determining its overall foreign loss, a taxpayer shall allocate and apportion expenses, losses, and other deductions to the appropriate category of gross income in accordance with section 862(b) and § 1.861-8 of the regulations. However, the following deductions shall not be taken into account:

(i) The amount of any net operating loss deduction for such year under section 172(a); and

(ii) To the extent such losses are not compensated for by insurance or otherwise, the amount of any—

(A) Expropriation losses for such year (as defined in section 172(h)), or

(B) Losses for such year which arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) *Additions to the overall foreign loss account—(1) General rule.* A taxpayer's overall foreign loss as determined under paragraph (c) of this section shall be added to the applicable overall foreign loss account at the end of its taxable year to the extent that the overall foreign loss has reduced United States source income during the taxable year or during a year to which the loss has been carried back. For rules with respect to carryovers see paragraph (d)(3) of this section and § 1.904(f)-3.

(2) *Overall foreign losses of another taxpayer.* If any portion of any overall foreign loss of another taxpayer is allocated to the taxpayer in accordance with § 1.904(f)-5 (relating to overall foreign losses of domestic trusts) or § 1.1502-9 (relating to consolidated overall foreign losses), the taxpayer shall add such amount to its applicable overall foreign loss account.

(3) *Additions to overall foreign loss account created by loss carryovers.* Subject to the adjustments under § 1.904(f)-1(d)(4), the taxpayer shall add to each overall foreign loss account—

(i) All net operating loss carryovers to the current taxable year attributable to the same limitation to the extent that overall foreign losses included in the net operating loss carryovers reduced United States source income for the taxable year, and

(ii) All capital loss carryovers to the current taxable year attributable to the same limitation to the extent that foreign source capital loss carryovers reduced United States source capital gain net income for the taxable year.

(4) [Reserved] For further guidance, see § 1.904(f)-1T(d)(4).

(e) *Reductions of overall foreign loss accounts.* The taxpayer shall subtract the following amounts from its overall foreign loss accounts at the end of its taxable year in the following order, if applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* An overall foreign loss account is reduced by the amount of any overall foreign loss which is allocated to another taxpayer in accordance with § 1.904(f)-5 (relating to overall foreign losses of domestic trusts) or § 1.1502-9 (relating to consolidated overall foreign losses).

(2) *Reduction for amounts recaptured.* An overall foreign loss account is reduced by the amount of any foreign source income that is subject to the same limitation as the loss that resulted in the account and that is recaptured in accordance with § 1.904(f)-2 (c) (relating to recapture under section 904(f)(1)); § 1.904(f)-2 (d) (relating to recapture when the taxpayer disposes of certain properties under section 904(f)(3)); and § 1.904(f)-4 (relating to recapture when the taxpayer receives an accumulation distribution from a foreign trust under section 904(f)(4)).

(f) *Illustrations.* The rules of this section are illustrated by the following examples.

Example 1. X Corporation is a domestic corporation with foreign branch operations in country C. X's taxable income and losses for its taxable year 1983 are as follows:

U.S. Source taxable income	\$1,000
Foreign source taxable income (loss)	
subject to the general limitation	
.....	(\$500)
Foreign source taxable income subject	
to the passive interest limitation	
.....	\$200

X has a general limitation overall foreign loss of \$500 for 1983 in accordance with paragraph (c) (1) of this section. Since the general limitation overall foreign loss is not considered to offset income under the separate limitation for passive interest income, it therefore offsets \$500 of United States source taxable income. This amount is added to X's general limitation overall foreign loss

account at the end of 1983 in accordance with paragraphs (c) (1) and (d) (1) of this section.

Example 2. Y Corporation is a domestic corporation with foreign branch operations in Country C. Y's taxable income and losses for its taxable year 1982 are as follows:

U.S. source taxable income	\$1,000
Foreign source taxable income (loss)	
subject to the general limitation	
.....	(\$500)
Foreign source taxable income subject	
to the passive interest limitation	
.....	\$250

For its pre-1983 taxable years, Y filed its returns determining its overall foreign losses on a combined basis. In accordance with paragraphs (a) and (c) (1) of this section, Y may net the foreign source income and loss before offsetting the United States source income. Y therefore has a section 904(d)(1)(A-C) overall foreign loss account of \$250 at the end of 1982.

Example 3. X Corporation is a domestic corporation with foreign branch operations in country C. For its taxable year 1985, X has taxable income (loss) determined as follows:

U.S. source taxable income	\$200
Foreign source taxable income (loss)	
subject to the general limitation	
.....	(\$1,000)
Foreign source taxable income (loss)	
subject to the passive limitation	
.....	\$1,800

X has a general limitation overall foreign loss of \$1,000 in accordance with paragraph (c)(1) of this section. The overall foreign loss offsets \$200 of United States source taxable income in 1985 and, therefore, X has a \$200 general limitation overall foreign loss account at the end of 1985. The remaining \$800 general limitation loss is offset by the passive interest limitation income in 1985 so that X has no net operating loss carryover that is attributable to the general limitation loss and no additional amount attributable to that loss will be added to the overall foreign loss account in 1985 or in any other year.

(g) [Reserved] For further guidance, see § 1.904(f)-1T(g).

[T.D. 8153, 52 FR 31994, Aug. 25, 1987; 52 FR 43434, Nov. 12, 1987, as amended by T.D. 9371, 72 FR 72597, Dec. 21, 2007]

§ 1.904(f)-1T Overall foreign loss and the overall foreign loss account (temporary).

(a)(1) [Reserved] For further guidance, see § 1.904(f)-1(a)(1).

(2) *Application to post-1986 taxable years.* The principles of §§ 1.904(f)-1 through 1.904(f)-5 shall apply to overall foreign loss sustained in taxable years beginning after December 31, 1986,