

§ 1.904(g)-2

26 CFR Ch. I (4-1-11 Edition)

(2) *Domestic loss defined.* For purposes of this section and §§1.904(g)-2T and 1.904(g)-3T, the term *domestic loss* means the amount by which the U.S. source gross income for the taxable year is exceeded by the sum of the expenses, losses and other deductions properly apportioned or allocated to such income, taking into account any net operating loss carried forward from a prior taxable year, but not any loss carried back. If a taxpayer has any capital gains or losses, the amount of the taxpayer's domestic loss shall be determined by taking into account adjustments under section 904(b)(2) and §1.904(b)-1. See §1.904(b)-1(h)(1)(iii).

(3) *Qualified taxable year defined.* For purposes of this section and §§1.904(g)-2T and 1.904(g)-3T, the term *qualified taxable year* means any taxable year for which the taxpayer chooses the benefits of section 901.

(4) *Method of allocation and apportionment of deductions.* In determining its overall domestic loss, a taxpayer shall allocate and apportion expenses, losses, and other deductions to U.S. gross income in accordance with sections 861(b) and 865 and the regulations thereunder, including §§1.861-8T through 1.861-14T.

(d) *Additions to overall domestic loss accounts—(1) General rule.* A taxpayer's overall domestic loss as determined under paragraph (c) of this section shall be added to the applicable overall domestic loss account at the end of its taxable year to the extent that the overall domestic loss either reduces foreign source income for the year (but only if such year is a qualified taxable year) or reduces foreign source income for a qualified taxable year to which the loss has been carried back.

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

(3) *Adjustments for capital gains and losses.* If the taxpayer has capital gains or losses, the amount by which an overall domestic loss reduces foreign source income in a taxable year shall be determined in accordance with §1.904(b)-1(h)(1)(i) and (iii).

(e) *Reductions of overall domestic loss accounts.* The taxpayer shall subtract the following amounts from its overall domestic 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 domestic loss account is reduced by the amount of any overall domestic loss which is allocated to another taxpayer in accordance with §1.1502-9T (relating to consolidated overall domestic losses).

(2) *Reduction for amounts recaptured.* An overall domestic loss account is reduced by the amount of any U.S. source income that is recharacterized in accordance with §1.904(g)-2T(c) (relating to recapture under section 904(g)(1)).

(f) *Effective/applicability date.* This section applies to any taxpayer that sustains an overall domestic loss for a taxable year beginning after *December 21, 2007*. Taxpayers may choose to apply this section to overall domestic losses sustained in other taxable years beginning after *December 31, 2006*, as well.

(g) *Expiration date.* The applicability of this section expires on *December 20, 2010*.

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

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

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

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

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

(a) *In general.* A taxpayer shall recapture an overall domestic loss as provided in this section. Recapture is accomplished by treating a portion of the taxpayer's U.S. source taxable income as foreign source income. The recharacterized income is allocated among and increases foreign source income in separate categories in proportion to the balances of the overall domestic loss accounts with respect to those separate categories. As a result, if the taxpayer elects the benefits of section 901, the taxpayer's foreign tax credit limitation is increased. As provided in §1.904(g)-1T(f)(2), the balance

in a taxpayer's overall domestic loss account with respect to a separate category is reduced at the end of each taxable year by the amount of loss recaptured during that taxable year. Recapture continues until such time as the amount of U.S. source income recharacterized as foreign source income equals the amount in the overall domestic loss account.

(b) *Determination of U.S. source taxable income for purposes of recapture.* For purposes of determining the amount of an overall domestic loss subject to recapture, the taxpayer's taxable income from U.S. sources shall be computed in accordance with the rules set forth in § 1.904(g)-1T(c)(4).

(c) *Section 904(g)(1) recapture.* The amount of any U.S. source taxable income subject to recharacterization in a taxable year in which paragraph (a) of this section is applicable is the lesser of the aggregate balance in taxpayer's overall domestic loss accounts in each separate category (after reduction of such account in accordance with § 1.904(g)-1T(e)) or fifty percent of the taxpayer's U.S. source taxable income (as determined under paragraph (b) of this section).

(d) *Effective/applicability date.* This section applies to any taxpayer that sustains an overall domestic loss for a taxable year beginning after *December 21, 2007*. Taxpayers may choose to apply this section to overall domestic losses sustained in other taxable years beginning after *December 31, 2006*, as well.

(e) *Expiration date.* The applicability of this section expires on *December 20, 2010*.

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

§ 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 § 1.904(g)-3T.

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

§ 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.* This section provides 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. The rules must be applied in the order set forth in paragraphs (b) through (g) of this section.

(b) *Step One: Allocation of net operating loss and net capital loss carryovers—(1) In general.* Net operating losses from a current taxable year are carried forward or back to a taxable year in the following manner. Net operating losses that are carried forward pursuant to section 172 are combined with income or loss in the carryover year in the manner described in this paragraph (b). The combined amounts are then subject to the ordering rules provided in paragraphs (c) through (g) of this section. Net operating losses that are carried back to a prior taxable year pursuant to section 172 are allocated to income in the carryback year in the manner set forth in paragraphs (b)(2) and (3), (c), and (d) of this section. The income in the carryback year to which the net operating loss is allocated is the foreign source income in each separate category and the U.S. source income after the application of sections 904(f) and 904(g) to income and loss in that previous year, including as a result of net operating loss carryovers or carrybacks from taxable years prior to the current taxable year.

(2) *Full net operating loss carryover.* If the full net operating loss (that remains after carryovers to other taxable years) is less than or equal to the taxable income in a particular taxable year (carryover year), and so can be carried forward in its entirety to such carryover year, U.S. source losses and foreign source losses in separate categories that are part of a net operating loss from a particular taxable year that is carried forward in its entirety shall be combined with the U.S. income