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minus $0 projected payment). Under paragraph (j)(4) of this section, because T accrued imputed interest under section 7872 on this split-dollar loan to G and this interest would not have accrued in the absence of section 7872, T is not required to include the positive adjustment in income, and G is not treated as having interest expense for the positive adjustment. To the same extent, T must include in income, and G is entitled to deduct, $15,000 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (T’s prior deduction for imputed compensation deemed paid to G and G’s prior inclusion of this amount). G takes the reversal into account in determining adjusted gross income. That is, the $15,000 is an “above-the-line” deduction, whether or not G itemizes deductions.

Example 3. (i) Assume the same facts as in Example 2, except that on December 31, 2013, T receives $127,000 (its premium payment of $100,000 plus $27,000).

(ii) Under the contingent split-dollar method, when the loan is repaid, there is a $27,000 positive adjustment ($27,000 actual payment minus $0 projected payment). Under paragraph (j)(4) of this section, because T accrued imputed interest of $23,710.48 under section 7872 on this split-dollar loan to G and this interest would not have accrued in the absence of section 7872, T is not required to include $23,710.48 of the positive adjustment in income, and G is not treated as having interest expense for the positive adjustment. To the same extent, in 2013, T must include in income, and G is entitled to deduct, $23,710.48 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (T’s prior deduction for imputed compensation deemed paid to G and G’s prior inclusion of this amount). G and T take these reversals into account in determining adjusted gross income. Under the contingent split-dollar method, T must include in income $3,289.52 upon resolution of the contingency ($27,000 positive adjustment minus $23,710.48).

(k) Payment ordering rule. For purposes of this section, a payment made by the borrower to or for the benefit of the lender pursuant to a split-dollar life insurance arrangement is applied to all direct and indirect split-dollar loans in the following order—

(1) A payment of interest to the extent of accrued but unpaid interest (including any OID) on all outstanding split-dollar loans in the order the interest accrued;

(2) A payment of principal on the outstanding split-dollar loans in the order in which the loans were made;

(3) A payment of amounts previously paid by a non-owner pursuant to a split-dollar life insurance arrangement that were not reasonably expected to be repaid by the owner; and

(4) Any other payment with respect to a split-dollar life insurance arrangement, other than a payment taken into account under paragraphs (k)(1), (2), and (3) of this section.

(i) [Reserved]

(m) Repayments received by a lender. Any amount received by a lender under a life insurance contract that is part of a split-dollar life insurance arrangement is treated as though the amount had been paid to the borrower and then paid by the borrower to the lender. Any amount treated as received by the borrower under this paragraph (m) is subject to other provisions of the Internal Revenue Code as applicable (for example, sections 72 and 101(a)). The lender must take the amount into account as a payment received with respect to a split-dollar loan, in accordance with paragraph (k) of this section. No amount received by a lender with respect to a split-dollar loan is treated as an amount received by reason of the death of the insured.

(n) Effective date—(1) General rule. This section applies to any split-dollar life insurance arrangement entered into after September 17, 2003. For purposes of this section, an arrangement is entered into as determined under §1.61–22(j)(1)(ii).

(2) Modified arrangements treated as new arrangements. If an arrangement entered into on or before September 17, 2003 is materially modified (within the meaning of §1.61–22(j)(2)) after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

[T.D. 9092, 68 FR 54352, Sept. 17, 2003]

§ 1.7872–16 Loans to an exchange facilitator under §1.468B–6.

(a) Exchange facilitator loans. This section provides rules in applying section 7872 to an exchange facilitator loan (within the meaning of §1.468B–6(c)(1)). For purposes of this section, the terms deferred exchange, exchange agreement, exchange facilitator, exchange
funds, qualified intermediary, replacement property, and taxpayer have the same meanings as in §1.468B–6(b).

(b) Treatment as demand loans. For purposes of section 7872, except as provided in paragraph (d) of this section, an exchange facilitator loan is a demand loan.

(c) Treatment as compensation-related loans. If an exchange facilitator loan is a below-market loan, the loan is a compensation-related loan under section 7872(c)(1)(B).

(d) Applicable Federal rate (AFR) for exchange facilitator loans. For purposes of section 7872, in the case of an exchange facilitator loan, the applicable Federal rate is the lower of the short-term AFR in effect under section 1274(d)(1) (as of the day on which the loan is made), compounded semiannually, or the 91-day rate. For purposes of the preceding sentence, the 91-day rate is equal to the investment rate on a 13-week (generally 91-day) Treasury bill with an issue date that is the same as the date that the exchange facilitator loan is made or, if the two dates are not the same, with an issue date that most closely precedes the date that the exchange facilitator loan is made.

(e) Use of approximate method permitted. The taxpayer and exchange facilitator may use the approximate method to determine the amount of forgone interest on any exchange facilitator loan.

(i) Exemption for certain below-market exchange facilitator loans. If an exchange facilitator loan is a below-market loan, the loan is not eligible for the exemptions from section 7872 listed under §1.7872–3T. However, the loan may be eligible for the exemption from section 7872 under §1.7872–5(b)(16) (relating to exchange facilitator loans in which the amount treated as loaned does not exceed $2,000,000).

(ii) Under paragraphs (b) and (c) of this section, the loan from T to QI is a compensation-related demand loan. Because there is no interest payable on the loan from T to QI, the loan is a below-market loan under section 7872. The loan is not exempt under §1.7872–5(b)(16) because the amount treated as loaned exceeds $2,000,000. Under section 7872(e)(2), the amount of forgone interest on the loan for 2008 is $7000 ($2,100,000*.04/2*1/6). Under section 7872(e)(2), the amount of forgone interest for 2009 is $14,000 ($2,100,000*.04/2*2/6). The $7000 for 2008 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on December 31, 2008. The $14,000 for 2009 is deemed transferred as compensation by T to QI and retransferred as interest by QI to T on March 1, 2009.

[T.D. 9413, 73 FR 39622, July 10, 2008]

§ 1.7874–1 Disregard of affiliate-owned stock.

(a) Scope. Section 7874(c)(2)(A) provides that stock of the foreign corporation referred to in section 7874(a)(2)(B) held by members of the expanded affiliated group (EAG) that includes such foreign corporation shall not be taken into account in determining ownership for purposes of section 7874(a)(2)(B)(ii). This section provides rules under section 7874(c)(2)(A). The rules provided in this section are also subject to section 7874(c)(4).

(b) General rule. Except as provided in paragraph (c) of this section, for purposes of the ownership percentage determination required by section 7874(a)(2)(B)(ii), stock held by one or more members of the EAG is not included in either the numerator or the