

## Internal Revenue Service, Treasury

## § 1.904(g)-1T

### *§ 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.
- (4) Net capital loss carryovers.
- (c) Step Two: Allocation of separate limitation losses.
- (d) Step Three: Allocation of U.S. source losses.
- (e) Step Four: Recapture of overall foreign loss accounts.
- (f) Step Five: Recapture of separate limitation loss accounts.
- (g) Step Six: Recapture of overall domestic loss accounts.
- (h) Examples.
  - (i) Effective/applicability date.
  - (j) Expiration date.

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

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

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

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

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

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's overall domestic losses, for establishing overall domestic loss accounts, and for making additions to and reductions from such accounts for purposes of section 904(g). Section 1.904(g)-2T provides rules for recapturing the balance in any overall domestic loss account under the general recharacterization rule of section 904(g)(1). Section 1.904(g)-3T provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and the recapture of separate limitation losses, overall foreign losses and overall domestic losses.

(b) *Overall domestic loss accounts—(1) In general.* Any taxpayer that sustains an overall domestic loss under paragraph (c) of this section must establish an account for such loss. Separate overall domestic loss accounts must be maintained with respect to each separate category in which foreign source income is offset by the domestic loss. The balance in each overall domestic loss account represents the amount of such overall domestic loss subject to recapture 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.

(2) *Taxable year in which overall domestic loss is sustained.* When a taxpayer incurs a domestic loss that is carried back as part of a net operating loss to offset foreign source income in a qualified taxable year, as defined in paragraph (c)(3) of this section, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss was incurred and not in the earlier year in which the loss offset foreign source income. Similarly, when a taxpayer incurs a domestic loss that is carried forward as part of a net operating loss and applied to offset foreign source income in a later taxable year, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss offsets foreign source income and not in the earlier year in which the loss was incurred. For example, if a taxpayer incurs a domestic loss in the 2007 taxable year that is carried back to the 2006 qualified taxable year and offsets foreign source income in 2006, the resulting overall domestic loss is treated as sustained in the 2007 taxable year. If a taxpayer incurs a domestic loss in a pre-2007 taxable year that is carried forward to a post-2006 qualified taxable year and offsets foreign source income in the post-2006 year, the resulting overall domestic loss is treated as sustained in the post-2006 year. The overall domestic loss account is established at the end of the later of the taxable year in which the domestic loss arose or the qualified taxable year to which the loss is carried and applied to offset foreign source income, and will be recaptured from U.S. source income arising in subsequent taxable years.

(c) *Determination of a taxpayer's overall domestic loss*—(1) *Overall domestic loss defined.* For taxable years beginning after December 31, 2006, a taxpayer sustains an overall domestic loss—

(i) In any qualified taxable year in which its domestic loss for such taxable year offsets foreign source taxable income for the taxable year or for any preceding qualified taxable year by reason of a carryback; and

(ii) In any other taxable year in which the domestic loss for such taxable year offsets foreign source taxable income for any preceding qualified taxable year by reason of a carryback.

(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]