[T.D. 9315, 72 FR 12914, Mar. 19, 2007; 72 FR 20424, Apr. 23, 2007]

§ 1.1503(d)–1 Definitions and special rules for filings under section 1503(d).

(a) *In general.* This section and §§ 1.1503(d)–2 through 1.1503(d)–8 provide rules concerning the determination and use of dual consolidated losses pursuant to section 1503(d). Paragraph (b) of this section provides definitions that apply for purposes of this section and §§ 1.1503(d)–2 through 1.1503(d)–8. Paragraph (c) of this section provides a reasonable cause exception and a signature requirement for filings.

(b) *Definitions.* The following definitions apply for purposes of this section and §§ 1.1503(d)–2 through 1.1503(d)–8:

(1) *Domestic corporation* means an entity classified as a domestic corporation under section 7701(a)(3) and (4) or otherwise treated as a domestic corporation by the Internal Revenue Code, including, but not limited to, sections 269B, 953(d), 1504(d), and 7874. However, solely for purposes of section 1503(d), the term domestic corporation shall not include a regulated investment company as defined in section 851, a real estate investment trust as defined in section 856, or an S corporation as defined in section 1361.

(2) *Dual resident corporation* means—

(i) A domestic corporation that is subject to an income tax of a foreign country on its worldwide income or on a residence basis. A corporation is taxed on a residence basis if it is taxed as a resident under the laws of the foreign country; and

(ii) A foreign insurance company that makes an election to be treated as a domestic corporation pursuant to section 953(d) and is treated as a member

of an affiliated group for purposes of chapter 6, even if such company is not subject to an income tax of a foreign country on its worldwide income or on a residence basis. See section 953(d)(3).

(3) *Hybrid entity* means an entity that is not taxable as an association for Federal tax purposes, but is subject to an income tax of a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis.

(4) *Separate unit*—(i) *In general.* The term *separate unit* means either of the following that is carried on or owned, as applicable, directly or indirectly, by a domestic corporation (including a dual resident corporation):

(A) Except to the extent provided in paragraph (b)(4)(iii) of this section, a business operation outside the United States that, if carried on by a U.S. person, would constitute a foreign branch as defined in §1.367(a)–6T(g)(1) (foreign branch separate unit).

(B) An interest in a hybrid entity (hybrid entity separate unit).

(ii) *Separate unit combination rule.* Except as otherwise provided in this paragraph, if a domestic owner, or two or more domestic owners that are members of the same consolidated group, have two or more separate units (individual separate units), then all such individual separate units that are located (in the case of a foreign branch separate unit) or subject to an income tax either on their worldwide income or on a residence basis (in the case of a hybrid entity an interest in which is a hybrid entity separate unit) in the same foreign country shall be treated as one separate unit (combined separate unit). See §1.1503(d)–7(c) *Example 1.* Separate units of a foreign insurance company that is a dual resident corporation under paragraph (b)(2)(ii) of this section, however, shall not be combined with separate units of any other domestic corporation. Except as specifically provided in this section or §§1.1503(d)–2 through 1.1503(d)–8, any individual separate unit composing a combined separate unit loses its character as an individual separate unit.

(iii) *Business operations that do not constitute a permanent establishment.* A business operation carried on by a domestic corporation that is not a dual resident corporation shall not constitute a foreign branch separate unit, provided the business operation:

(A) Is not carried on indirectly through a hybrid entity or a transparent entity; and

(B) Is conducted in a country with which the United States has entered into an income tax convention and is not treated as a permanent establishment pursuant to that convention, or is not otherwise subject to tax on a net basis under that convention. See §1.1503(d)–7(c) *Example 2.*

(iv) *Foreign branch separate units held by dual resident corporations or hybrid entities in the same foreign country.* A foreign branch separate unit may be owned by a dual resident corporation, or through a hybrid entity (an interest in which is a separate unit), even where the foreign branch is located in the same foreign country that subjects such dual resident corporation or hybrid entity to tax on its worldwide income or on a residence basis. But see the rule under paragraph (b)(4)(ii) of this section that combines certain same-country hybrid entity separate units and foreign branch separate units. See also §1.1503(d)–7(c) *Example 1.*

(5) *Dual consolidated loss* means—

(i) In the case of a dual resident corporation, and except to the extent provided in §1.1503(d)–5(b), the net operating loss (as defined in section 172(c) and the related regulations) incurred in a year in which the corporation is a dual resident corporation; and

(ii) In the case of a separate unit, the net loss attributable to the separate unit under §1.1503(d)–5(c) through (e).

(6) *Subject to tax.* For purposes of determining whether a domestic corporation or another entity is subject to an income tax of a foreign country on its income, the fact that it has no actual income tax liability to the foreign country for a particular taxable year shall not be taken into account.

(7) *Foreign country* includes any possession of the United States.

(8) *Consolidated group* has the meaning provided in §1.1502–1(h).

(9) *Domestic owner* means—

(i) A domestic corporation (including a dual resident corporation) that has one or more separate units or interests in a transparent entity; and

(ii) In the case of a combined separate unit, a domestic corporation (including a dual resident corporation) that has one or more individual separate units that are treated as part of the combined separate unit under paragraph (b)(4)(ii) of this section.

(10) *Affiliated dual resident corporation* and *affiliated domestic owner* mean a dual resident corporation and a domestic owner, respectively, that is a member of a consolidated group.

(11) *Unaffiliated dual resident corporation*, *unaffiliated domestic corporation*, and *unaffiliated domestic owner* mean a dual resident corporation, domestic corporation, and domestic owner, respectively, that is not a member of a consolidated group.

(12) *Domestic affiliate* means—

(i) A member of an affiliated group, without regard to the exceptions contained in section 1504(b) (other than section 1504(b)(3)) relating to includible corporations;

(ii) A domestic owner;

(iii) A separate unit; or

(iv) An interest in a transparent entity, as defined in paragraph (b)(16) of this section.

(13) *Domestic use*. See §1.1503(d)–2.

(14) *Foreign use*. See §1.1503(d)–3.

(15) *Grantor trust* means a trust, any portion of which is treated as being owned by the grantor or another person under subpart E of subchapter J of this chapter.

(16) *Transparent entity*—(i) *In general*. The term *transparent entity* means an entity described in this paragraph (b)(16) where all or a portion of its interests are owned, directly or indirectly, by a domestic corporation. An entity is described in this paragraph (b)(16) if the entity—

(A) Is not taxable as an association for Federal tax purposes;

(B) Is not subject to income tax in a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis; and

(C) Is not a pass-through entity under the laws of the applicable foreign country. For purposes of applying the preceding sentence, the applicable foreign country is the foreign country in which the relevant foreign branch separate unit is located, or the foreign country that subjects the relevant hybrid entity (an interest in which is a separate unit) or dual resident corporation to an income tax either on its worldwide income or on a residence basis.

(ii) *Example*. A U.S. limited liability company (LLC) does not elect to be taxed as an association for Federal tax purposes and is not subject to income tax in a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis. The LLC is owned by a hybrid entity (an interest in which is a separate unit) that is the relevant hybrid entity. Provided the LLC is not treated as a pass-through entity by the applicable foreign country that subjects the relevant hybrid entity to an income tax either on its worldwide income or on a residence basis, the LLC would qualify as a transparent entity. See also §1.1503(d)–7(c) *Example 26*.

(17) *Disregarded entity* means an entity that is disregarded as an entity separate from its owner, under §§301.7701–1 through 301.7701–3 of this chapter, for Federal tax purposes.

(18) *Partnership* means an entity that is classified as a partnership, under §§301.7701–1 through 301.7701–3 of this chapter, for Federal tax purposes.

(19) *Indirectly*, when used in reference to ownership, means ownership through a partnership, a disregarded entity, or a grantor trust, regardless of whether the partnership, disregarded entity, or grantor trust is a U.S. person.

(20) *Certification period* means the period of time up to and including the fifth taxable year following the year in which the dual consolidated loss that is the subject of a domestic use agreement (as described in §1.1503(d)–6(d)(1)) was incurred.

(c) *Special rules for filings under section 1503(d)*—(1) *Reasonable cause exception*. A person that is permitted or required to file an election, agreement, statement, rebuttal, computation, or other information pursuant to section 1503(d) and these regulations, that fails to make such filing in a timely manner, shall be considered to have satisfied the timeliness requirement with respect to such filing if the person is

able to demonstrate, to the Area Director, Field Examination, Small Business/Self Employed or the Director of Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the taxpayer's tax return for the taxable year, that such failure was due to reasonable cause and not willful neglect. In determining whether the taxpayer has reasonable cause, the Director shall consider whether the taxpayer acted reasonably and in good faith. In general, the taxpayer must demonstrate that it exercised ordinary care and prudence in meeting its tax obligations but nonetheless did not comply with the prescribed duty within the prescribed time. Whether the taxpayer acted reasonably and in good faith will be determined after considering all the facts and circumstances. The Director shall notify the person in writing within 120 days of the filing if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination. For this purpose, the 120-day period shall begin on the date the taxpayer is notified in writing that the request has been received and assigned for review. If, once such period commences, the taxpayer is not again notified within 120 days, then the taxpayer shall be deemed to have established reasonable cause. The reasonable cause exception of this paragraph (c) shall only apply if, once the person becomes aware of its failure to file the election, agreement, statement, rebuttal, computation or other information in a timely manner, the person complies with the requirements of paragraph (c)(2) of this section.

(2) *Requirements for reasonable cause relief*—(i) *Time of submission.* Requests for reasonable cause relief will only be considered if once the person becomes aware of the failure to file the election, agreement, statement, rebuttal, computation or other information, the person attaches all the documents that should have been filed, as well as a written statement setting forth the reasons for the failure to timely comply, to an amended return that amends the return to which the documents should have been attached pursuant to the rules of section 1503(d) and these regulations.

(ii) *Notice requirement.* In addition to the requirements of paragraph (c)(2)(i) of this section, the taxpayer must provide a copy of the amended return and all required attachments to the Director as follows:

(A) If the taxpayer is under examination for any taxable year when the taxpayer requests relief, the taxpayer must provide a copy of the amended return and attachments to the personnel conducting the examination.

(B) If the taxpayer is not under examination for any taxable year when the taxpayer requests relief, the taxpayer must provide a copy of the amended return and attachments to the Director having jurisdiction of the taxpayer's return.

(3) *Signature requirement.* When an election, agreement, statement, rebuttal, computation, or other information is required pursuant to section 1503(d) and these regulations to be attached to and filed by the due date (including extensions) of a U.S. tax return and signed under penalties of perjury by the person who signs the return, the attachment and filing of an unsigned copy is considered to satisfy such requirement, provided the taxpayer retains the original in its records in the manner specified by § 1.6001–1(e).

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§ 1.1503(d)–2 Domestic use.

A *domestic use* of a dual consolidated loss shall be deemed to occur when the dual consolidated loss is made available to offset, directly or indirectly, the income of a domestic affiliate (other than the dual resident corporation or separate unit that, in each case, incurred the dual consolidated loss) in the taxable year in which the dual consolidated loss is recognized, or in any other taxable year, regardless of whether the dual consolidated loss offsets income under the income tax laws of a foreign country and regardless of whether any income that the dual consolidated loss may offset in the foreign country is, has been, or will be subject to tax in the United States. A domestic use shall be deemed to occur in the year the dual consolidated loss is included in the computation of the taxable income of a consolidated group, unaffiliated dual resident corporation,