

## Internal Revenue Service, Treasury

## § 1.1503(d)-0

### § 1.1503(d)-0 Table of contents.

This section lists the captions contained in §§ 1.1503(d)-1 through 1.1503(d)-8.

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

- (a) In general.
- (b) Definitions.
  - (1) Domestic corporation.
  - (2) Dual resident corporation.
  - (3) Hybrid entity.
  - (4) Separate unit.
    - (i) In general.
    - (ii) Separate unit combination rule.
  - (iii) Business operations that do not constitute a permanent establishment.
  - (iv) Foreign branch separate units held by dual resident corporations or hybrid entities in the same foreign country.
  - (5) Dual consolidated loss.
  - (6) Subject to tax.
  - (7) Foreign country.
  - (8) Consolidated group.
  - (9) Domestic owner.
  - (10) Affiliated dual resident corporation and affiliated domestic owner.
  - (11) Unaffiliated dual resident corporation, unaffiliated domestic corporation, and unaffiliated domestic owner.
  - (12) Domestic affiliate.
  - (13) Domestic use.
  - (14) Foreign use.
  - (15) Grantor trust.
  - (16) Transparent entity.
    - (i) In general.
    - (ii) Example.
  - (17) Disregarded entity.
  - (18) Partnership.
  - (19) Indirectly.
  - (20) Certification period.
- (c) Special rules for filings under section 1503(d).
  - (1) Reasonable cause exception.
  - (2) Requirements for reasonable cause relief.
    - (i) Time of submission.
    - (ii) Notice requirement.
  - (3) Signature requirement.

#### *§ 1.1503(d)-2 Domestic use.*

#### *§ 1.1503(d)-3 Foreign use.*

- (a) Foreign use.
  - (1) In general.
  - (2) Indirect use.
    - (i) General rule.
    - (ii) Exception.
    - (iii) Examples.
  - (3) Deemed use.
    - (b) Available for use.
    - (c) Exceptions.
      - (1) In general.
      - (2) Election or merger required to enable foreign use.
    - (3) Presumed use where no foreign country rule for determining use.

- (4) Certain interests in partnerships or grantor trusts.
  - (i) General rule.
  - (ii) Combined separate unit.
  - (iii) Reduction in interest.
- (5) De minimis reduction of an interest in a separate unit.
  - (i) General rule.
  - (ii) Limitations.
  - (iii) Reduction in interest.
  - (iv) Examples and coordination with exceptions to other triggering events.
- (6) Certain asset basis carryovers.
- (7) Assumption of certain liabilities.
  - (i) In general.
  - (ii) Ordinary course limitation.
- (8) Multiple-party events.
- (9) Additional guidance.
- (d) Ordering rules for determining the foreign use of losses.
  - (e) Mirror legislation rule.
    - (1) In general.
    - (2) Stand-alone exception.
      - (i) In general.
      - (ii) Stand-alone domestic use agreement.
      - (iii) Termination of stand-alone domestic use agreement.

#### *§ 1.1503(d)-4 Domestic use limitation and related operating rules.*

- (a) Scope.
- (b) Limitation on domestic use of a dual consolidated loss.
- (c) Effect of a dual consolidated loss on a consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner.
  - (1) Dual resident corporation.
  - (2) Separate unit.
  - (3) SRLY limitation.
  - (4) Items of a dual consolidated loss used in other taxable years.
  - (5) Reconstituted net operating losses.
- (d) Elimination of a dual consolidated loss after certain transactions.
  - (1) General rule.
  - (i) Transactions described in section 381(a).
  - (ii) Cessation of separate unit status.
  - (2) Exceptions.
    - (i) Certain section 368(a)(1)(F) reorganizations.
    - (ii) Acquisition of a dual resident corporation by another dual resident corporation.
    - (iii) Acquisition of a separate unit by a domestic corporation.
    - (A) Acquisition by a corporation that is not a member of the same consolidated group.
    - (B) Acquisition by a member of the same consolidated group.
  - (iv) Special rules for foreign insurance companies.
  - (e) Special rule denying the use of a dual consolidated loss to offset tainted income.
    - (1) In general.
    - (2) Tainted income.
      - (i) Definition.

## § 1.1503(d)-0

- (ii) Income presumed to be derived from holding tainted assets.
- (3) Tainted assets defined.
- (4) Exceptions.
- (f) Computation of foreign tax credit limitation.

### *§ 1.1503(d)-5 Attribution of items and basis adjustments.*

- (a) In general.
- (b) Determination of amount of income or dual consolidated loss of a dual resident corporation.
  - (1) In general.
  - (2) Exceptions.
- (c) Determination of amount of income or dual consolidated loss attributable to a separate unit, and income or loss attributable to an interest in a transparent entity.
  - (1) In general.
  - (i) Scope and purpose.
  - (ii) Only items of domestic owner taken into account.
  - (iii) Separate application.
  - (2) Foreign branch separate unit.
    - (i) In general.
    - (ii) Principles of § 1.882-5.
    - (iii) Exception where foreign country attributes interest expense solely by reference to books and records.
  - (3) Hybrid entity separate unit and an interest in a transparent entity.
    - (i) General rule.
    - (ii) Interests in certain disregarded entities, partnerships, and grantor trusts owned by a hybrid entity or transparent entity.
  - (4) Special rules.
    - (i) Allocation of items between certain tiered separate units and interests in transparent entities.
      - (A) Foreign branch separate unit.
      - (B) Hybrid entity separate unit or interest in a transparent entity.
    - (ii) Combined separate unit.
    - (iii) Gain or loss on the direct or indirect disposition of a separate unit or an interest in a transparent entity.
      - (A) In general.
      - (B) Multiple separate units or interests in transparent entities.
    - (iv) Inclusions on stock.
    - (v) Foreign currency gain or loss recognized under section 987.
    - (vi) Recapture of dual consolidated loss.
    - (d) Foreign tax treatment disregarded.
    - (e) Items generated or incurred while a dual resident corporation, a separate unit, or a transparent entity.
    - (f) Assets and liabilities of a separate unit or an interest in a transparent entity.
    - (g) Basis adjustments.
      - (1) Affiliated dual resident corporation or affiliated domestic owner.
      - (2) Interests in hybrid entities that are partnerships or interests in partnerships

## 26 CFR Ch. I (4-1-16 Edition)

- through which a separate unit is owned indirectly.
- (i) Scope.
- (ii) Determination of basis of partner's interest.
- (3) Combined separate units.

### *§ 1.1503(d)-6 Exceptions to the domestic use limitation rule.*

- (a) In general.
  - (1) Scope and purpose.
  - (2) Absence of foreign affiliate or foreign consolidation regime.
  - (3) Foreign insurance companies treated as domestic corporations.
- (b) Elective agreement in place between the United States and a foreign country.
  - (1) In general.
  - (2) Application to combined separate units.
  - (c) No possibility of foreign use.
    - (1) In general.
    - (2) Statement.
    - (d) Domestic use election.
      - (1) In general.
      - (2) No domestic use election available if there is a triggering event in the year the dual consolidated loss is incurred.
  - (e) Triggering events requiring the recapture of a dual consolidated loss.
    - (1) Events.
      - (i) Foreign use.
    - (ii) Disaffiliation.
    - (iii) Affiliation.
    - (iv) Transfer of assets.
    - (v) Transfer of an interest in a separate unit.
    - (vi) Conversion to a foreign corporation.
    - (vii) Conversion to a regulated investment company, a real estate investment trust, or an S corporation.
    - (viii) Failure to certify.
    - (ix) Cessation of stand-alone status.
  - (2) Rebuttal.
    - (i) General rule.
    - (ii) Certain asset transfers.
    - (iii) Reporting.
    - (iv) Examples.
    - (f) Triggering event exceptions.
      - (1) Continuing ownership of assets or interests.
        - (i) Disaffiliation as a result of a transaction described in section 381.
        - (ii) Continuing ownership by consolidated group.
        - (iii) Continuing ownership by unaffiliated dual resident corporation or unaffiliated domestic owner.
      - (2) Transactions requiring a new domestic use agreement.
        - (i) Multiple-party events.
        - (ii) Events resulting in a single consolidated group.
        - (iii) Requirements.
          - (A) New domestic use agreement.
          - (B) Statement filed by original elector.
        - (3) Certain transfers qualifying for the de minimis exception to foreign use.

## Internal Revenue Service, Treasury

## § 1.1503(d)-1

- (4) Deemed transactions as a result of certain transfers that do not result in a foreign use.
- (5) Compulsory transfers.
- (6) Subsequent triggering events.
- (g) Annual certification reporting requirement.
- (h) Recapture of dual consolidated loss and interest charge.
  - (1) Presumptive rules.
    - (i) Amount of recapture.
    - (ii) Interest charge.
  - (2) Reduction of presumptive recapture amount and presumptive interest charge.
    - (i) Amount of recapture.
    - (ii) Interest charge.
  - (3) Rules regarding multiple-party event exceptions to triggering events.
    - (i) Scope.
      - (ii) Original elector and prior subsequent electors not subject to recapture or interest charge.
      - (iii) Recapture tax amount and required statement.
        - (A) In general.
        - (B) Recapture tax amount.
        - (iv) Tax assessment and collection procedures.
          - (A) In general.
          - (B) Collection from original elector and prior subsequent electors; joint and several liability.
        - (C) Allocation of partial payments of tax.
        - (D) Refund.
        - (v) Definition of income tax liability.
        - (vi) Example.
      - (4) Computation of taxable income in year of recapture.
        - (i) Presumptive rule.
        - (ii) Exception to presumptive rule.
      - (5) Character and source of recapture income.
      - (6) Reconstituted net operating loss.
        - (i) General rule.
        - (ii) Exception.
        - (iii) Special rule for recapture following multiple-party event exception to a triggering event.
      - (i) [Reserved]
      - (j) Termination of domestic use agreement and annual certifications.
        - (1) Rebuttals, exceptions to triggering events, and recapture.
        - (2) Termination of ability for foreign use.
          - (i) In general.
          - (ii) Statement.
        - (3) Agreements filed in connection with stand-alone exception.

### § 1.1503(d)-7 Examples.

- (a) In general.
- (b) Presumed facts for examples.
- (c) Examples.

### § 1.1503(d)-8 Effective dates.

- (a) General rule.

- (b) Special rules.
  - (1) Reduction of term of agreements filed under §§ 1.1503-2A(c)(3), 1.1503-2A(d)(3), 1.1503-2(g)(2)(i), or 1.1503-2T(g)(2)(i).
  - (2) Reduction of term of agreements filed under §§ 1.1503-2(g)(2)(iv)(B)(2)(i) (1992), 1.1503-2(g)(2)(iv)(B)(3)(i), or Rev. Proc. 2000-42.
  - (3) Relief for untimely filings.
    - (i) General rule.
    - (ii) Closing agreements.
    - (iii) Pending requests for relief.
  - (4) Multiple-party event exception to triggering events.
  - (5) Basis adjustment rules.

[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