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be suspended in the hands of the partner, shareholder or beneficiary.

(c) *Related income of a partnership, S corporation or trust.* For purposes of determining whether related income is taken into account by a covered person, related income of a partnership, S corporation or trust is considered to be taken into account by the partner, shareholder or beneficiary to whom the related income is allocated.

(d) *Application of section 909 to pre-1987 accumulated profits and pre-1987 foreign income taxes.* Section 909 and §§1.909–1 through 1.909–5 will apply to pre-1987 accumulated profits (as defined in §1.902–1(a)(10)(i)) and pre-1987 foreign income taxes (as defined in §1.902–1(a)(10)(iii)) of a section 902 corporation attributable to taxable years beginning on or after January 1, 2012.

(e) *Effective/applicability date.* This section applies to taxable years ending after February 9, 2015. See 26 CFR 1.909–1T (revised as of April 1, 2014) for rules applicable to taxable years beginning on or after January 1, 2011, and ending on or before February 9, 2015.

[T.D. 9710, 80 FR 7328, Feb. 10, 2015]

§1.909–2 Splitter arrangements.

(a) *Foreign tax credit splitting event*—(1) *In general.* There is a foreign tax credit splitting event with respect to foreign income taxes paid or accrued if and only if, in connection with an arrangement described in paragraph (b) of this section (a *splitter arrangement*) the related income was, is or will be taken into account for U.S. Federal income tax purposes by a person that is a covered person with respect to the payor of the tax. Foreign income taxes that are paid or accrued in connection with a splitter arrangement are split taxes to the extent provided in paragraph (b) of this section. Income (or, as appropriate, earnings and profits) that was, is or will be taken into account by a covered person in connection with a splitter arrangement is related income to the extent provided in paragraph (b) of this section.

(2) *Split taxes not taken into account.* Split taxes will not be taken into account for U.S. Federal income tax purposes before the taxable year in which the related income is taken into account by the payor or, in the case of split taxes paid or accrued by a section 902 corporation, by a section 902 shareholder of such section 902 corporation. Therefore, in the case of split taxes paid or accrued by a section 902 corporation, split taxes will not be taken into account for purposes of sections 902 or 960, or for purposes of determining earnings and profits under section 964(a), before the taxable year in which the related income is taken into account by the payor section 902 corporation, a section 902 shareholder of the section 902 corporation, or a member of the section 902 shareholder's consolidated group. See §1.909–3(a) for rules relating to when split taxes and related income are taken into account.

(b) *Splitter arrangements.* The arrangements set forth in this paragraph (b) are splitter arrangements.

(1) *Reverse hybrid splitter arrangements*—(i) *In general.* A reverse hybrid is a splitter arrangement when a payor pays or accrues foreign income taxes with respect to income of a reverse hybrid. A reverse hybrid splitter arrangement exists even if the reverse hybrid has a loss or a deficit in earnings and profits for a particular year for U.S. Federal income tax purposes (for example, due to a timing difference).

(ii) *Split taxes from a reverse hybrid splitter arrangement.* The foreign income taxes paid or accrued with respect to income of the reverse hybrid are split taxes.

(iii) *Related income from a reverse hybrid splitter arrangement.* The related income with respect to split taxes from a reverse hybrid splitter arrangement is the earnings and profits (computed for U.S. Federal income tax purposes) of the reverse hybrid attributable to the activities of the reverse hybrid that gave rise to income included in the payor's foreign tax base with respect to which the split taxes were paid or accrued. Accordingly, related income of the reverse hybrid includes items of income or expense attributable to a disregarded entity owned by the reverse hybrid only to the extent that the income attributable to the activities of the disregarded entity is included in the payor's foreign tax base.

(iv) *Reverse hybrid.* The term *reverse hybrid* means an entity that is a corporation for U.S. Federal income tax

purposes but is a fiscally transparent entity (under the principles of §1.894–1(d)(3)) or a branch under the laws of a foreign country imposing tax on the income of the entity.

(v) *Examples.* The following examples illustrate the rules of paragraph (b)(1) of this section.

Example 1. (i) *Facts.* USP, a domestic corporation, wholly owns DE, a disregarded entity for U.S. federal income tax purposes that is organized in country A and treated as a corporation for country A tax purposes. DE wholly owns RH, a corporation for U.S. Federal income tax purposes that is organized in country A and treated as a fiscally transparent entity for country A tax purposes. Country A imposes an income tax at the rate of 30% on DE with respect to the items of income earned by RH. Prior to year 1, RH had no income for country A purposes and had no post-1986 earnings and profits for U.S. Federal income tax purposes. In year 1, RH earns 200u of income on which DE pays 60u of country A tax. Pursuant to §1.901–2(f)(4)(ii), USP is treated as legally liable for the 60u of country A taxes paid by DE. DE has no other income. In year 2, RH earns no income and incurs no losses or expenses. At the end of year 2, RH distributes 100u to DE.

(ii) *Result.* (A) *Split taxes and related income.* Pursuant to §1.909–2(b)(1)(iv), RH is a reverse hybrid because it is a corporation for U.S. Federal income tax purposes and a fiscally transparent entity for country A purposes. Pursuant to §1.909–2(b)(1), RH is a covered person with respect to USP because USP wholly owns RH for U.S. Federal income tax purposes. Pursuant to §1.909–2(b)(1)(i), there is a splitter arrangement with respect to RH because USP paid country A tax with respect to the income of RH. All 60u of taxes paid by USP in year 1 with respect to the income of RH are split taxes pursuant to §1.909–2(b)(1)(ii). The post-1986 earnings and profits of RH are 200u as of the end of year 1. Pursuant to §1.909–2(b)(1)(iii), the related income in year 1 is the 200u of RH's earnings and profits that are attributable to the activities that gave rise to the split taxes. No additional split taxes or related income arise in year 2.

(B) *Distribution.* Because DE is a disregarded entity, the 100u distribution by RH at the end of year 2 is treated as a dividend to USP. Pursuant to §1.909–6(d)(7) and §1.909–3(a), 100u of the 200u of related income of RH, or 50%, is taken into account by USP by reason of the 100u dividend. Accordingly, pursuant to §1.909–6(e)(4) and §1.909–3(a), a ratable portion of the split taxes, or 30u of taxes (50% of 60u), is no longer treated as split taxes and is taken into account by USP for U.S. Federal income tax purposes.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that in year 2, RH has a 100u loss for U.S. Federal income tax purposes as well as for country A tax purposes. For country A tax purposes, DE takes the 100u loss into account in year 2 and may not carry back the 100u loss to offset its country A taxable income for year 1. At the end of year 2, RH distributes 100u to DE.

(ii) *Result.* (A) *Split taxes and related income.* The split taxes and related income for year 1 are the same as in *Example 1.* Pursuant to §1.909–2(b)(1)(iii), §1.909–6(d)(1) and §1.909–3(a), the total related income of RH is reduced to 100u (200u − 100u) in year 2 because RH incurred a 100u loss in year 2 attributable to the activities that are included in DE's country A tax base.

(B) *Distribution.* Because DE is a disregarded entity, the 100u distribution by RH at the end of year 2 is treated as a dividend to USP. Pursuant to §1.909–6(d)(7) and §1.909–3(a), 100u of the 100u of related income of RH, or 100%, is taken into account by USP by reason of the 100u dividend. Accordingly, pursuant to §1.909–6(e)(4) and §1.909–3(a), a ratable portion of the split taxes, or 60u of taxes (100% of 60u), is no longer treated as split taxes and is taken into account by USP for U.S. Federal income tax purposes.

(2) *Loss-sharing splitter arrangements*—(i) *In general.* A foreign group relief or other loss-sharing regime is a loss-sharing splitter arrangement to the extent that a shared loss of a U.S. combined income group could have been used to offset income of that group in the current or in a prior foreign taxable year (*usable shared loss*) but is used instead to offset income of another U.S. combined income group.

(ii) *U.S. combined income group.* The term *U.S. combined income group* means an individual or a corporation and all entities (including entities that are fiscally transparent for U.S. Federal income tax purposes under the principles of §1.894–1(d)(3)) that for U.S. Federal income tax purposes combine any of their respective items of income, deduction, gain or loss with the income, deduction, gain or loss of such individual or corporation. A U.S. combined income group can arise, for example, as a result of an entity being disregarded or, in the case of a partnership or hybrid partnership and a partner, as a result of the allocation of income or any other item of the partnership to the partner. For purposes of this paragraph (b)(2)(ii), a branch is treated as an entity, all members of a U.S. affiliated

group of corporations (as defined in section 1504) that file a consolidated return are treated as a single corporation, and two or more individuals that file a joint return are treated as a single individual. A U.S. combined income group may consist of a single individual or corporation and no other entities, but cannot include more than one individual or corporation. In addition, an entity may belong to more than one U.S. combined income group. For example, a hybrid partnership with two corporate partners that do not combine any of their items of income, deduction, gain or loss for U.S. Federal income tax purposes is in a separate U.S. combined income group with each of its partners.

(iii) *Income and shared loss of a U.S. combined income group*—(A) *Income.* Except as otherwise provided in this paragraph (b)(2)(iii)(A), the income of a U.S. combined income group is the aggregate amount of taxable income recognized or taken into account for foreign tax purposes by those members that have positive taxable income for foreign tax purposes. In the case of an entity that is fiscally transparent (under the principles of §1.894–1(d)(3)) for foreign tax purposes and that is a member of more than one U.S. combined income group, the foreign taxable income of the entity is allocated between or among the groups under foreign tax law. In the case of an entity that is not fiscally transparent for foreign tax purposes and that is a member of more than one U.S. combined income group, the foreign taxable income of the entity is allocated between or among those groups based on U.S. Federal income tax principles. For example, in the case of a hybrid partnership, the foreign taxable income of the partnership is allocated between or among the groups in the manner the partnership allocates the income under section 704(b). To the extent the foreign taxable income would be income under U.S. Federal income tax principles in another year, the income is allocated between or among the groups based on how the hybrid partnership would allocate the income if the income were recognized for U.S. Federal income tax purposes in the year in which the income is recognized for foreign tax purposes. To the extent the foreign taxable income would not constitute income under U.S. Federal income tax principles in any year, the income is allocated between or among the groups in the same manner as the partnership items attributable to the activity giving rise to the foreign taxable income.

(B) *Shared loss.* The term *shared loss* means a loss of one entity for foreign tax purposes that, in connection with a foreign group relief or other loss-sharing regime, is taken into account by one or more other entities. Except as otherwise provided in this paragraph (b)(2)(iii)(B), the amount of shared loss of a U.S. combined income group is the sum of the shared losses of all members of the U.S. combined income group. In the case of an entity that is fiscally transparent (under the principles of §1.894–1(d)(3)) for foreign tax purposes and that is a member of more than one U.S. combined income group, the shared loss of the entity is allocated between or among the groups under foreign tax law. In the case of an entity that is not fiscally transparent for foreign tax purposes and that is a member of more than one U.S. combined income group, the shared loss of the entity will be allocated between or among those groups based on U.S. Federal income tax principles. For example, in the case of a hybrid partnership, the shared loss of the partnership will be allocated between or among the groups in the manner the partnership allocates the loss under section 704(b). To the extent the shared loss would be a loss under U.S. Federal income tax principles in another year, the loss is allocated between or among the groups based on how the partnership would allocate the loss if the loss were recognized for U.S. Federal income tax purposes in the year in which the loss is recognized for foreign tax purposes. To the extent the shared loss would not constitute a loss under U.S. Federal income tax principles in any year, the loss is allocated between or among the groups in the same manner as the partnership items attributable to the activity giving rise to the shared loss.

(iv) *Split taxes from a loss-sharing splitter arrangement.* Split taxes from a loss-sharing splitter arrangement are foreign income taxes paid or accrued by a

member of the U.S. combined income group with respect to income from the current foreign taxable year, or, in the case of a foregone carryback loss, from the prior foreign taxable year, equal to the amount of the usable shared loss of that group that offsets income of another U.S. combined income group.

(v) *Related income from a loss-sharing splitter arrangement.* The related income with respect to split taxes from a loss-sharing splitter arrangement is an amount of income of the individual or corporate member of the U.S. combined income group equal to the amount of income under foreign tax law of that U.S. combined income group that is offset by the usable shared loss of another U.S. combined income group.

(vi) *Foreign group relief or other loss-sharing regime.* A foreign group relief or other loss-sharing regime exists when an entity may surrender its loss to offset the income of one or more other entities. A foreign group relief or other loss-sharing regime does not include an allocation of loss of an entity that is a partnership or other fiscally transparent entity (under the principles of §1.894–1(d)(3)) for foreign tax purposes or regimes in which foreign tax is imposed on combined income (such as a foreign consolidated regime), as described in §1.901–2(f)(3).

(vii) *Examples.* The following examples illustrate the rules of paragraph (b)(2) of this section.

Example 1. (i) *Facts.* USP, a domestic corporation, wholly owns CFC1, a corporation organized in country A. CFC1 wholly owns CFC2 and CFC3, both corporations organized in country A. CFC2 wholly owns DE, an entity organized in country A. DE is a corporation for country A tax purposes and a disregarded entity for U.S. Federal income tax purposes. Country A has a loss-sharing regime under which a loss of CFC1, CFC2, CFC3 or DE may be used to offset the income of one or more of the others. Country A imposes an income tax at the rate of 30% on the taxable income of corporations organized in country A. In year 1, before any loss sharing, CFC1 has no income, CFC2 has income of 50u, CFC3 has income of 200u, and DE has a loss of 100u. Under the provisions of country A's loss-sharing regime, the group decides to use DE's 100u loss to offset 100u of CFC3's income. After the loss is shared, for country A's tax purposes, CFC2 still has 50u of income on which it pays 15u of country A tax. CFC3 has income of 100u (200u less the 100u shared loss) on which it pays 30u of country A tax. For U.S. Federal income tax purposes, the loss sharing with CFC3 is not taken into account. Because DE is a disregarded entity, its 100u loss is taken into account by CFC2 and reduces its earnings and profits for U.S. Federal income tax purposes. Accordingly, before application of section 909, CFC2 has a loss for earnings and profits purposes of 65u (50u income less 15u taxes paid to country A less 100u loss of DE). CFC2 also has the U.S. dollar equivalent of 15u of foreign income taxes to add to its post-1986 foreign income taxes pool. CFC3 has earnings and profits of 170u (200u income less 30u of taxes) and the dollar equivalent of 30u of foreign income taxes to add to its post-1986 foreign income taxes pool.

(ii) *Result.* Pursuant to §1.909–2(b)(2)(ii), CFC2 and DE constitute one U.S. combined income group, while CFC1 and CFC3 each constitute separate U.S. combined income groups. Pursuant to §1.909–2(b)(2)(iii)(A), the income of the CFC2 U.S. combined income group is 50u (CFC2's country A taxable income of 50u). The income of the CFC3 U.S. combined income group is 200u (CFC3's country A taxable income of 200u). Pursuant to §1.909–2(b)(2)(iii)(B), the shared loss of the CFC2 U.S. combined income group includes the 100u of shared loss incurred by DE. The usable shared loss of the CFC2 U.S. combined income group is 50u, the amount of the group's shared loss that could have otherwise offset CFC2's 50u of country A taxable income that is included in the income of the CFC2 U.S. combined income group. There is a splitter arrangement because the 50u usable shared loss of the CFC2 U.S. combined income group was used instead to offset income of CFC3, which is included in the CFC3 U.S. combined income group. Pursuant to §1.909–2(b)(2)(iv), the split taxes are the 15u of country A income taxes paid by CFC2 on 50u of income, an amount of income of the CFC2 U.S. combined income group equal to the amount of usable shared loss of that group that was used to offset income of the CFC3 U.S. combined income group. Pursuant to §1.909–2(b)(2)(v), the related income is the 50u of CFC3's income that equals the amount of income of the CFC3 U.S. combined income group that was offset by the usable shared loss of the CFC2 U.S. combined income group.

Example 2. (i) *Facts.* USP, a domestic corporation, wholly owns CFC1, a corporation organized in country B. CFC1 wholly owns CFC2 and CFC3, both corporations organized in country B. CFC2 wholly owns DE, an entity organized in country B. DE is a corporation for country B tax purposes and a disregarded entity for U.S. Federal income tax purposes. CFC2 and CFC3 each own 50% of HP1, an entity organized in country B. HP1 is a corporation for country B tax purposes

and a partnership for U.S. Federal income tax purposes. All items of income and loss of HP1 are allocated for U.S. Federal income tax purposes equally between CFC2 and CFC3, and all entities use the country B currency ''u'' as their functional currency. Country B has a loss-sharing regime under which a loss of any of CFC1, CFC2, CFC3, DE, and HP1 may be used to offset the income of one or more of the others. Country B imposes an income tax at the rate of 30% on the taxable income of corporations organized in country B. In year 1, before any loss sharing, CFC2 has income of 100u, CFC1 and CFC3 have no income, DE has a loss of 100u, and HP1 has income of 200u. Under the provisions of country B's loss-sharing regime, the group decides to use DE's 100u loss to offset 100u of HP1's income. After the loss is shared, for country B tax purposes, CFC2 has 100u of income on which it pays 30u of country B income tax, and HP1 has 100u of income (200u less the 100u shared loss) on which it pays 30u of country B income tax. For U.S. Federal income tax purposes, the loss sharing with HP1 is not taken into account, and, because DE is a disregarded entity, its 100u loss is taken into account by CFC2 and reduces CFC2's earnings and profits for U.S. Federal income tax purposes. The 200u income of HP1 is allocated 50/50 to CFC2 and CFC3, as is the 30u of country B income tax paid by HP1. Accordingly, before application of section 909, for U.S. Federal income tax purposes, CFC2 has earnings and profits of 55u (100u income plus 100u share of HP1's income less 100u loss of DE less 30u country B income tax paid by CFC2 less 15u share of HP1's country B income tax) and the dollar equivalent of 45u of country B income tax to add to its post-1986 foreign income taxes pool. CFC3 has earnings and profits of 85u (100u share of HP1's income less 15u share of HP1's country B income taxes) and the dollar equivalent of 15u of country B income tax to add to its post-1986 foreign income taxes pool.

(ii) *U.S. combined income groups.* Pursuant to §1.909–2(b)(2)(ii), because the income and loss of HP1 are combined in part with the income and loss of both CFC2 and CFC3, it belongs to both of the separate CFC2 and CFC3 U.S. combined income groups. DE is a member of the CFC2 U.S. combined income group.

(iii) *Income of the U.S. combined income groups.* Pursuant to §1.909–2(b)(2)(iii)(A), the income of the CFC2 U.S. combined income group is the 200u country B taxable income of the members of the group with positive taxable incomes (CFC2's country B taxable income of 100u plus 50% of HP1's country B taxable income of 200u, or 100u). Because DE does not have positive taxable income for country B tax purposes, its 100u loss is not included in the income of the CFC2 U.S. combined income group. The income of the CFC3 U.S. combined income group is 100u (50% of HP1's country B taxable income of 200u, or 100u).

(iv) *Shared loss of the U.S. combined income groups.* Pursuant to §1.909–2(b)(2)(iii)(B), the shared loss of the CFC2 U.S. combined income group is the 100u loss incurred by DE that is used to offset 100u of HP1's income. The CFC3 U.S. combined income group has no shared loss. Pursuant to §1.909–2(b)(2)(i), the usable shared loss of the CFC2 U.S. combined income group is 100u, the full amount of the group's 100u shared loss that could have been used to offset income of the CFC2 U.S. combined income group had the loss been used to offset 100u of CFC2's country B taxable income.

(v) *Income offset by shared loss.* The shared loss of the CFC2 combined income group is used to offset 100u country B taxable income of HP1. Because the taxable income of HP1 is allocated 50/50 between the CFC2 and CFC3 U.S. combined income groups, the shared loss is treated as offsetting 50u of the CFC2 U.S. combined income group's income and 50u of the CFC3 U.S. combined income group's income.

(vi) *Splitter arrangement.* There is a splitter arrangement because 50u of the 100u usable shared loss of the CFC2 U.S. combined income group was used to offset income of the CFC3 U.S. combined income group. Pursuant to §1.909–2(b)(2)(iv), the split taxes are the 15u of country B income tax paid by CFC2 on 50u of its income, which is equal to the amount of the CFC2 U.S. combined income group's usable shared loss that was used to offset income of another U.S. combined income group. Pursuant to §1.909–2(b)(2)(v), the related income is the 50u of CFC3's income that was offset by the usable shared loss of the CFC2 U.S. combined income group.

(3) *Hybrid instrument splitter arrangements*—(i) *U.S. equity hybrid instrument splitter arrangement*—(A) *In general.* A U.S. equity hybrid instrument is a splitter arrangement if:

(*1*) Under the laws of a foreign jurisdiction in which the instrument owner is subject to tax, the instrument gives rise to income includible in the instrument owner's income and such inclusion results in foreign income taxes paid or accrued by the instrument owner;

(*2*) Under the laws of a foreign jurisdiction in which the issuer is subject to tax, the instrument gives rise to deductions that are incurred or otherwise taken into account by the issuer; and

(*3*) The events that give rise to income includible in the instrument owner's income for foreign tax purposes as described in paragraph (b)(3)(i)(A)(1) of

this section, and to deductions for the issuer for foreign tax purposes as described in paragraph (b)(3)(i)(A)(2) of this section, do not result in an inclusion of income for the instrument owner for U.S. federal income tax purposes.

(B) *Split taxes from a U.S. equity hybrid instrument splitter arrangement.* Split taxes from a U.S. equity hybrid instrument splitter arrangement equal the total amount of foreign income taxes paid or accrued by the owner of the hybrid instrument less the amount of foreign income taxes that would have been paid or accrued had the owner of the U.S. equity hybrid instrument not been subject to foreign tax on income from the instrument with respect to the events described in §1.909–2(b)(3)(i)(A).

(C) *Related income from a U.S. equity hybrid instrument splitter arrangement.* The related income with respect to split taxes from a U.S. equity hybrid instrument splitter arrangement is income of the issuer of the U.S. equity hybrid instrument in an amount equal to the amounts giving rise to the split taxes that are deductible by the issuer for foreign tax purposes, determined without regard to the actual amount of the issuer's income or earnings and profits for U.S. Federal income tax purposes.

(D) *U.S. equity hybrid instrument.* The term *U.S. equity hybrid instrument* means an instrument that is treated as equity for U.S. Federal income tax purposes but for foreign income tax purposes either is treated as indebtedness or otherwise entitles the issuer to a deduction with respect to such instrument.

(E) *Example*—(i) *Facts.* USP, a domestic corporation, wholly owns CFC1, which wholly owns CFC2. Both CFC1 and CFC2 are corporations organized in country A. CFC2 issues an instrument to CFC1 that is treated as indebtedness for country A tax purposes but equity for U.S. Federal income tax purposes. Under country A's income tax laws, the instrument accrues interest at the end of each month, which results in a deduction for CFC2 and an income inclusion and tax liability for CFC1 in country A. The accrual of interest does not result in an inclusion of income for CFC1 for U.S. Federal income tax purposes. Pursuant to the terms of the instrument, CFC2 makes a distribution at the end of the year equal to the amounts of interest that have accrued during the year, and such payment is treated as a dividend that is included in the income of CFC1 for U.S. Federal income tax purposes.

(ii) *Result.* Pursuant to §1.909–2(b)(3)(i)(D), because the instrument is treated as equity for U.S. Federal income tax purposes but is treated as indebtedness for country A tax purposes, it is a U.S. equity hybrid instrument. Pursuant to §1.909–2(b)(3)(i)(A)(*3*), because the accrual of interest under foreign law does not result in an inclusion of income of CFC1 for U.S. Federal income tax purposes, there is a splitter arrangement. The fact that the payment of the accrued amount at the end of the year pursuant to the terms of the instrument gives rise to a dividend that is included in income of CFC1 for U.S. Federal income tax purposes does not change the result because it is the accrual of interest and not the payment that gives rise to income or deductions under foreign law. The payments will be treated as a distribution of related income to the extent provided by §1.909–3 and §1.909–6(d).

(ii) *U.S. debt hybrid instrument splitter arrangement*—(A) *In general.* A U.S. debt hybrid instrument is a splitter arrangement if foreign income taxes are paid or accrued by the issuer of a U.S. debt hybrid instrument with respect to income in an amount equal to the interest (including original issue discount) paid or accrued on the instrument that is deductible for U.S. Federal income tax purposes but that does not give rise to a deduction under the laws of a foreign jurisdiction in which the issuer is subject to tax.

(B) *Split taxes from a U.S. debt hybrid instrument splitter arrangement.* Split taxes from a U.S. debt hybrid instrument splitter arrangement are the foreign income taxes paid or accrued by the issuer on the income that would have been offset by the interest paid or accrued on the U.S. debt hybrid instrument had such interest been deductible for foreign tax purposes.

(C) *Related income from a U.S. debt hybrid instrument splitter arrangement.* The

related income from a U.S. debt hybrid instrument splitter arrangement is the gross amount of the interest income recognized for U.S. Federal income tax purposes by the owner of the U.S. debt hybrid instrument, determined without regard to the actual amount of the owner's income or earnings and profits for U.S. Federal income tax purposes.

(D) *U.S. debt hybrid instrument.* The term *U.S. debt hybrid instrument* means an instrument that is treated as equity for foreign tax purposes but as indebtedness for U.S. Federal income tax purposes.

(4) *Partnership inter-branch payment splitter arrangements*—(i) *In general.* An allocation of foreign income tax paid or accrued by a partnership with respect to an inter-branch payment as described in §1.704–1(b)(4)(viii)(*d*)(*3*) (revised as of April 1, 2011) (the *inter-branch payment tax*) is a splitter arrangement to the extent the inter-branch payment tax is not allocated to the partners in the same proportion as the distributive shares of income in the CFTE category to which the inter-branch payment tax is or would be assigned under §1.704–1(b)(4)(viii)(*d*) without regard to §1.704–1(b)(4)(viii)(*d*)(*3*).

(ii) *Split taxes from a partnership inter-branch payment splitter arrangement.* The split taxes from a partnership inter-branch splitter arrangement equal the excess of the amount of the inter-branch payment tax allocated to a partner under the partnership agreement over the amount of the inter-branch payment tax that would have been allocated to the partner if the inter-branch payment tax had been allocated to the partners in the same proportion as the distributive shares of income in the CFTE category referred to in paragraph (b)(4)(i) of this section.

(iii) *Related income from a partnership inter-branch payment splitter arrangement.* The related income from a partnership inter-branch payment splitter arrangement equals the amount of income allocated to a partner that exceeds the amount of income that would have been allocated to the partner if income in the CFTE category referred to in paragraph (b)(4)(i) of this section in the amount of the inter-branch payment had been allocated to the partners in the same proportion as the inter-branch payment tax was allocated under the partnership agreement.

(c) *Effective/applicability date.* This section applies to foreign income taxes paid or accrued in taxable years ending after February 9, 2015. However, a taxpayer may choose to apply the provisions of §1.909–2T (as contained in 26 CFR part 1, revised as of April 1, 2014) in lieu of this section to foreign income taxes paid or accrued in its first taxable year ending after February 9, 2015, and in taxable years of foreign corporations with respect to which the taxpayer is a domestic shareholder (as defined in §1.902–1(a)) that end with or within that first taxable year. See 26 CFR 1.909–2T (revised as of April 1, 2014) for rules applicable to foreign income taxes paid or accrued in taxable years beginning on or after January 1, 2012, and ending on or before February 9, 2015.

[T.D. 9710, 80 FR 7328, Feb. 10, 2015]

§1.909–3 Rules regarding related income and split taxes.

(a) *Interim rules for identifying related income and split taxes.* The principles of paragraphs (d) through (f) of §1.909–6 apply to related income and split taxes in taxable years beginning on or after January 1, 2011, except that the alternative method for identifying distributions of related income described in §1.909–6(d)(4) applies only to identify the amount of pre-2011 split taxes of a section 902 corporation that are suspended as of the first day of the section 902 corporation's first taxable year beginning on or after January 1, 2011.

(b) *Split taxes on deductible disregarded payments.* Split taxes include taxes paid or accrued in taxable years beginning on or after January 1, 2011, with respect to the amount of a disregarded payment that is deductible by the payor of the disregarded payment under the laws of a foreign jurisdiction in which the payor of the disregarded payment is subject to tax on related income from a splitter arrangement. The amount of the deductible disregarded payment to which this paragraph (b) applies is limited to the amount of related income from such splitter arrangement.

(c) *Effective/applicability date.* This section applies to taxable years ending